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HOME-GROWN RACISM: COLORADO'S HISTORIC EMBRACE—AND DENIAL—OF EQUAL OPPORTUNITY IN HIGHER EDUCATION

RICHARD DELGADO* & JEAN STEFANCIC**

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INTRODUCTION

In the mid-1920s, the Ku Klux Klan dominated Colorado's government, the governor, a majority of the legislature, and many mayors and police chiefs enthusiastic members.¹ The "hooded empire" boasted a state membership in the tens of thousands of white citizens, many of whom apparently saw the Klan as a sort of social club. But as it did elsewhere, the Colorado Klan contained a hardened element that regularly

1. See ROBERT ALAN GOLDBERG, *HOODED EMPIRE: THE KU KLUX KLAN IN COLORADO* (1981); PHIL H. GOODSTEIN, *THE SEAMY SIDE OF DENVER: TALL TALES OF THE MILE HIGH CITY* 239-48 (1993); Peter Knox, *The Campus and Klan: A Classic Lesson in Civility*, COLORADO, Dec. 1997, at 10; Audiotape: *The Rise and Fall of Dr. John Galen Locke: The KKK in Colorado* (Colorado Reflections radio series) (on file in the Auraria Library, University of Colorado at Denver) [hereinafter John Galen Locke (oral history tape)].

met and marched in full regalia, thousands strong, lynching, burning crosses, and bombing the houses of its opponents.²

Today, the state contains a relatively small minority population—about thirteen percent Latinos, four percent blacks, two percent Asians, and less than one percent Native Americans.³ Could it be that the state's record of Klan domination discouraged people of color from settling in a prospering western state that was, for many, the land of freedom and opportunity? One might well imagine that a family of color considering relocating in the West and faced with a choice between Colorado and another state, say Washington, with a less notorious embrace of an organization devoted to systematic bigotry, might well have chosen the latter.

This article addresses Colorado's treatment of citizens of color, beginning in territorial days and continuing into the present. We are particularly interested in incidents and conditions that bear on the ability of persons of color to obtain a higher education. With diversity and affirmative action under attack, we believe that the so-called diversity rationale set out by the Supreme Court in *Regents of University of California v. Bakke*⁴ may be repudiated or cut back by judicial decision, trustee action, or direct referendum. If so, *remediation*—making amends for past sins—may be the only basis left for institutions of higher learning to operate race-conscious programs. Our premise is that the Fourteenth Amendment will always tolerate—perhaps require—at least this component of affirmative action, so that institutions that have demonstrably discriminated against members of a minority group should be able to adjust admissions and hiring practices to place the group in the *status quo ante*, the position they would have been in had the discrimination not occurred.⁵

The scope of our inquiry is broad. We are interested, of course, in how public universities themselves have excluded minority groups or made them feel unwelcome. But we are

2. See GOLDBERG, *supra* note 1; see also *infra* Part III.

3. See Patricia Callahan, *State's Minorities Lead in Population Growth*, DENV. POST, Sept. 4, 1998, at A1.

4. *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978). For a discussion of affirmative action in higher education, see *infra* Part I.

5. Otherwise, the Fourteenth Amendment would seem to have little in the way of practical enforcement. See *infra* Part I.

also interested in a broader complex of social forces that have limited the ability of Colorado parents of color to send their children to college.

Why Colorado? One reason is, simply, that the two of us live and work here and would regard the loss of a generation of minority professionals as a serious setback to the kind of society we value. But on a broader level, we place Colorado under the lens because we believe that if the record discloses that a state such as ours, with a self-image that includes openness and fair treatment for all, nevertheless has much to live down,⁶ the case for affirmative action everywhere strengthens. As we write, researchers at other universities around the nation have begun examining the histories of their own states and institutions,⁷ while the U.S. Department of Justice⁸ and a commission established by Colorado's former Governor Roy Romer⁹ have been documenting discrimination

6. See CAREY MCWILLIAMS, *ILL FARES THE LAND: MIGRANTS AND MIGRATORY LABOUR IN THE UNITED STATES* 122 (1945) (describing how Americans assume "democracy was reborn" in the West, although conditions in rural Colorado belie that assumption); Mark Obmascik, *Race Still Matters in Denver*, DENV. POST, Nov. 25, 1997, at B1 (describing how ten days of violence by Colorado skinheads, including a shootout murder of Denver police officer Bruce Vander Jagt, then the drive-by murder of West African Oumar Dia, and finally the shooting of "Good Samaritan" Jeannie Van Velkinburgh left local residents in shock). Yet,

[t]his is the same city where homes were firebombed to protest court-ordered schools integration, the same metro area that amended the state Constitution to prevent the minority-populated city from annexing new areas, the same state that elected a legislator who opposed portable toilets for field workers because 'they need training' to use one A seed of hate doesn't sprout solely out of thin air.

Id.

7. See Thomas D. Russell, *History of Racial Discrimination at the University of Texas* (visited Jan. 29, 1999) <<http://www.ccwf.cc.utexas.edu/russell/seminar/smnr.html>>; Letter from Kevin R. Johnson, Professor of Law, University of California-Davis Law School, to Richard Delgado and Jean Stefancic (Oct. 15, 1997) (on file with the authors); see also David J. Garrow, *Mississippi's Spy Secrets*, NEWSWEEK, Mar. 30, 1998, at 15 (explaining that investigators revealed that Mississippi had maintained a secret state agency aimed at discrediting the civil rights movement).

8. See Michael Higgins, *Plan of Action*, 68 A.B.A. J., Apr. 1998, at 68.

9. See Governor Roy Romer, Exec. Order No. D000798, Apr. 9, 1998 (creating the 13-member Disparity Resolution Task Force to respond to the Disparity Study Final Report); STATE OF COLO., COLO. DEPT OF TRANSP., *DISPARITY STUDY: FINAL REPORT* (1998) (unveiling a two year independent study on state spending ordered by the Colorado legislature in response to legal challenges to affirmative action, addressing the disparity between the number of Minority/Women/Disadvantage Business Enterprise firms that are qualified to

in various industries, including construction, in order to meet the standards the Supreme Court seemingly has in mind for remedial affirmative action. That rationale, then, seems to be emerging just as the attack on affirmative action by conservative think tanks, litigation centers, and public opinion increases in virulence.¹⁰

This article begins with a brief review of the case law dealing with affirmative action in higher education, giving special attention to its various rationales and the related issues of standards of review and proof. We then turn to the history of Colorado's treatment of ethnic minorities of color, focusing on events and conditions that, for most, would affect higher education opportunity. The actions of universities and public elementary and high schools are a primary, but by no means the exclusive, focus. As the reader will see, prejudice and discrimination weave a complex web, with various forms and manifestations converging on denial of higher education opportunity.

We are interested in the history of Colorado's treatment of its four largest ethnic groups of color—Latinos or Mexicanos, blacks, Asians, and Native Americans—in all the main areas in which they have experienced discrimination. Since terrorism, police brutality, and job discrimination have a large and obvious bearing on the willingness of minority groups to move to Colorado in the first place, as well as the ability of those living here to send their sons and daughters to college, we examine these and many other types of discrimination apt to affect upward mobility and equal education opportunity. Our approach is chronological and concentric: we look at Colorado's treatment of minorities from early times to the present and in areas of life radiating out from education to include jobs, housing, public accommodations, and more.

This broad treatment, we believe, is justified for a number of reasons. First, it is difficult to predict in what posture the Supreme Court will leave higher education affirmative action when it next revisits the doctrine. It seems likely that the

perform contracts with the State of Colorado and the Colorado Department of Transportation ("CDOT") and the utilization by the state and CDOT of these firms in contracting and purchasing).

10. See JEAN STEFANCIC & RICHARD DELGADO, *NO MERCY: HOW CONSERVATIVE THINK TANKS AND FOUNDATIONS CHANGED AMERICA'S SOCIAL AGENDA* (1996).

remedial rationale will always remain in some form, but whether that form will be narrow or broad is unknown. But, legalities aside, we believe open-minded readers in Colorado and elsewhere want to know how higher education's predicament vis-à-vis minority communities has emerged. Does Colorado have much, or little, to live down? Understanding the scope of any problem is the first step toward addressing it intelligently and humanely.

How did each ethnic minority group in Colorado first encounter whites and what has been their experience with their white neighbors and government? For our purposes, this history divides into three eras: early times, going back to territorial days, about 1850, up to about 1920.¹¹ Next, the Ku Klux Klan era and its aftermath, extending from about 1920 to the 1950s.¹² Finally, the post-World War II period until the present.¹³ Each era has a characteristic tone and quality; each shades off, of course, into the next.

Beginning around 1947, a significant development occurred to which we give separate treatment. Denver Mayor Quigg Newton, a liberal who sympathized with the plight of minorities, organized the Denver Commission on Human Relations ("Commission"), a blue ribbon group charged with investigating discrimination against minorities in the city. The Commission and successor spin-off groups did important work, not only in investigating and documenting discrimination, but also in bringing sociological and pseudo-sociological insights to the public's attention concerning various ethnic groups. The first, investigative part of the Commission's work appears to have been wholly beneficial. The second, to which it turned its attention a little later in its tenure, had a less positive cast. Although the Commission began with the intention of introducing the public to minority communities and the circumstances in which they lived, its reports, meetings, bus tours, and pamphlets, as will be seen, constituted a kind of official knowledge-creation that in many respects made things more difficult for its intended beneficiaries.¹⁴

11. *See infra* Part II.

12. *See infra* Part III.

13. *See infra* Part IV.

14. *See infra* Part IV.B.

A further separate focus of this article, which dovetails to some extent with the one just mentioned, concerns the role of Colorado's colleges and universities in advancing or retarding discrimination against communities of color. Many of the expert educators and social scientists who wrote reports for the Commission and its successor committees worked for universities and colleges in the state. The state's professors also served as expert witnesses for public school districts resisting desegregation suits. As will be seen, state universities often operated, in subtle or overt ways, to advance or resist discrimination within their ranks and the surrounding communities. We detail these operations in a separate section, since they are of prime importance to determining whether higher education remedial action is warranted in the post-diversity era.¹⁵

Conditions in three individual industries also come in for separate treatment: migrant farming, especially in the sugar beet industry, meatpacking, and mining. Each of these is a major sector of Colorado's economy; each has been guilty of severe mistreatment of minority workers.¹⁶

Although we are more interested in the victimization, rather than the struggle side side of the equation—more interested, in other words, in what minority groups have had to cope with rather than the often gallant efforts they have made to carry on despite the burdens placed on them—we do discuss the history of minority activism in a number of areas, including in the state's universities.¹⁷ Two final caveats and qualifications. We are not historians, nor do we write with historical theory in mind. We bring to these pages aspects of Colorado history, not to illumine some historical thesis or new interpretation, but to understand how they bear on legal and social policy. What follows, then, is more like a "Brandeis" brief than a standard work of historiography.¹⁸ We pick out

15. *See id.*

16. *See infra* Part V.

17. *See, e.g., infra* text accompanying notes 110, 192-205, 503-04, 609-24.

18. *See Muller v. Oregon*, 208 U.S. 412 (1908) (employing social science data, long excluded by most higher courts, in a brief for the state); *see also* John Monahan & Laurens Walker, *Social Authority: Obtaining and Establishing Social Science in Law*, 134 U. PA. L. REV. 477, 477-82 (1986).

Studies of this sort usually attract two separate, invalid, objections which we may as well address now. The first objection is, are we not overlooking all the good things Colorado, and individual Colorado citizens, have done for minorities

and describe incidents and connections of likely interest to legal decisionmakers, policymakers, and legislators. They, not historians, are our primary audience.

Finally, we cannot by any stretch of the imagination claim to be comprehensive. The history of communities of color, even in one state, is too vast and multifaceted to be contained in a single article or book. What we offer is only a beginning; we hope other researchers will continue the project we have begun.

I. RACE CONSCIOUS PROGRAMS IN HIGHER EDUCATION

In a fairly recent line of cases, the Supreme Court has set parameters on what governmental institutions, in particular colleges and universities, may do in the way of affirmative action. Beginning with *Regents of the University of California v. Bakke*,¹⁹ the Court addressed such issues as the standard of review for programs that afford racial preference;²⁰ whether race may be determinative or only one factor among many in admissions and hiring;²¹ whether admissions committees must

over the years? The answer is, of course, but this is completely irrelevant. The appropriate level of discrimination is zero; a private firm that discriminates against a minority group (say, blacks) may not offset kind treatment of another minority group, or of that group on another occasion, in order to escape liability. This is generally true of crimes. A murderer may not plead that on other occasions he behaved in socially useful ways. See FEODOR DOSTOEVSKI, *CRIME AND PUNISHMENT* (Bantam Books 1962) (describing the character Raskolnikov, who murdered his landlady and then sought to escape punishment by listing the good things he planned to do in life).

The second objection is that Colorado is no worse than other states. But if "everyone was doing it," the conclusion ought to be that those other states similarly owe remediation to the minorities they treated badly, not that all should escape responsibility. Also, one should not prejudge Colorado's record in comparison with other states. Scholars in other states are researching their states' records now, and others may join in later. Colorado may turn out to be better, or worse, than these other states when the full record becomes clear.

19. 438 U.S. 265 (1978).

20. See *id.* at 287-89, 320; see also *id.* at 361-62 (Brennan, J., concurring in the judgment and dissenting in part) (arguing, in an opinion joined by three other justices, for intermediate scrutiny). But see *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995) (even benign racial classifications—those intended to help minorities—trigger strict scrutiny); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493-94, 519 (1989) (same).

21. See *Bakke*, 438 U.S. at 315 (use of race permissible, if not determinative or decisive). But see *infra* notes 24-31. and accompanying text (use of race impermissible, even if not decisive but as merely one criteria among many, under the Fifth Circuit's approach in *Hopwood*).

compare all applicants to each other, as opposed to considering whites and nonwhites in separate processes;²² and other similar matters. In general, the Court has narrowed the constitutionally permissible scope of race- or diversity-based consideration with each decision. Nevertheless, until recently most commentators believed that properly operated university affirmative action programs, both for student admissions and faculty hiring, were constitutional.²³

The Fifth Circuit decision of *Hopwood v. Texas*²⁴ cast doubt on that belief. Closely following the Court's analysis in *Adarand Constructors, Inc. v. Peña*,²⁵ the circuit court applied strict scrutiny to declare race-based admissions at the University of Texas Law School unconstitutional. The school's purpose had been "[t]o achieve the diversity of background and experience in its student population essential to prepare students for the real world functioning of the law in our diverse nation."²⁶ The district court, following Justice Powell's opinion in *Bakke*, had held that this purpose met the compelling interest standard required for using racial preferences, but that Texas's admissions process had not been narrowly tailored to advance that interest.²⁷ On appeal, however, the Fifth Circuit found the Texas program unconstitutional on even more basic grounds. Declaring that "Justice Powell's view in *Bakke* is not binding precedent on this issue,"²⁸ it held that any consideration of race for the

22. See *Bakke*, 438 U.S. at 317 (permissible if all applicants compared). But see *infra* notes 24-31 and accompanying text (impermissible under *Hopwood*).

23. See, e.g., WILLIAM G. BOWEN & DEREK BOK, *THE SHAPE OF THE RIVER: LONG-TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS* (1998); NEIL L. RUDENSTINE, *HARVARD UNIVERSITY, THE PRESIDENT'S REPORT 1993-1995* (1996); Akhil Reed Amar & Neal Kumar Katyal, *Bakke's Fate*, 43 *UCLA L. REV.* 1745 (1996); Duncan Kennedy, *A Cultural Pluralist Case for Affirmative Action in Legal Academia*, 1990 *DUKE L.J.* 705; Goodwin Liu, *Affirmative Action in Higher Education: The Diversity Rationale and the Compelling Interest Test*, 33 *HARV. C.R.-C.L. L. REV.* 381 (1998); Tanya Y. Murphy, *An Argument for Diversity Based Affirmative Action in Higher Education*, 1995 *ANN. SURV. AM. L.* 515, 539-50; Susan Sturm & Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 *CAL. L. REV.* 953 (1996); Note, *An Evidentiary Framework for Diversity as a Compelling Interest in Higher Education*, 109 *HARV. L. REV.* 1357 (1996).

24. 78 F.3d 932 (5th Cir. 1996), *cert. denied*, 116 S. Ct. 2581 (1996).

25. 515 U.S. 200 (1995).

26. *Hopwood v. Texas*, 861 F. Supp. 551, 570 (W.D. Tex. 1994).

27. See *id.* at 569-74.

28. *Hopwood*, 78 F.3d at 944.

purpose of achieving a diverse student body is impermissible under the Fourteenth Amendment.²⁹ Such a racial criterion is "no more rational . . . than would be choices based upon the physical size or blood type of applicants."³⁰ Using race as a factor merely "replicates the very harm that the Fourteenth Amendment was designed to eliminate."³¹

The *Hopwood* court went on to say that recent Supreme Court decisions had left open "essentially only one compelling state interest" that could justify affirmative action in higher action: namely, "remedying past wrongs."³² Although this may not be literally true, it remains that the Supreme Court declined to review *Hopwood*.³³ And, in the meantime, numerous commentators have warned (or urged) that when the Court does have before it an affirmative-action-in-higher-education case, it may well eliminate or greatly narrow the diversity rationale.³⁴ Further, as mentioned, states currently may do the same by bill, trustee action, or voter initiative. If the *Hopwood* court's admonition turns out to be right, strict scrutiny will not recognize any compelling interest other than remediation for past racial wrongs. Although one might well wish for more, this rationale at least would seem the irreducible constitutional minimum.

Building on cases such as *Wygant v. Jackson Board of Education*³⁵ and *City of Richmond v. J.A. Croson Co.*,³⁶ it is possible to make some informed conjectures on how the remedial rationale will play out in higher education settings. First, the findings of past discrimination will need to be specific and particularized, not merely "societal" and general,³⁷ "the mere recitation of a 'benign' or legitimate purpose for a racial classification [will be] entitled to little or no weight."³⁸ In addition, these findings must pertain to the region in

29. *See id.*

30. *Id.* at 945.

31. *Id.* at 946.

32. *Id.* at 944.

33. *See supra* note 24 and accompanying text.

34. *See Liu, supra* note 23, at 381-82; Ethan Bronner, *Group Suing University of Michigan over Diversity*, N.Y. TIMES, Oct. 14, 1997, at A24 (describing impending lawsuit).

35. 476 U.S. 267 (1986).

36. 488 U.S. 469 (1989).

37. *See Liu, supra* note 23, at 400-01.

38. *Croson*, 488 U.S. at 500.

question; general or national ones (for example, that most universities were lax in recruiting minorities or maintained unofficial color lines until recently) will have "extremely limited" probative value.³⁹ The racial wrongs will have to be proved by a factfinder with credibility—a university's *mea culpa* alone will probably not be enough.⁴⁰ Finally, remediation must be necessary to correct the racial wrong (such as discouragement or exclusion of black or Hispanic college admission-seekers) and not broader or more long-lived than necessary.⁴¹

Beyond these general guidelines, it is difficult to predict how much remediation the Fourteenth Amendment will tolerate or require. A line of lower court cases suggests that a university may offer race-based programs "if [it can] show that it had essentially become a 'passive participant' in a system of racial exclusion"⁴² carried out by private entities operating in its region, or, especially, allied with it. The same rationale would seem to operate even more strongly if the university had encouraged or given support to an entity, such as a city council in a college town, that discouraged minorities from settling there.⁴³ Of course, the Supreme Court could take an opposite approach, engrafting absurdly narrow guidelines on the remedial rationale so that a university could not engage in racial preferences unless particular departments—or, perhaps, particular professorships or programs within departments—

39. *Id.* at 504.

40. See Liu, *supra* note 23, at 400-01.

41. See Lackland H. Bloom, Jr., Hopwood, Bakke, and the Future of the Diversity Justification, 29 TEX. TECH. L. REV. 1, 50-54 (1998).

42. *Croson*, 488 U.S. at 492; see also *Coral Constr. Co. v. King County*, 941 F.2d 910, 916 (9th Cir. 1991).

43. For the view that private discrimination sometimes warrants public affirmative action (viz., by a state agency), see Ian Ayres & Frederick E. Vars, *When Does Private Discrimination Justify Public Affirmative Action?*, 98 COLUM. L. REV. 1577, 1577 (1998), arguing that overlooked language in *City of Richmond v. J.A. Croson Co.* allows government to eradicate the effects of private, not just governmental or public, discrimination. The authors put forward three justifications for remedying private discrimination through public efforts: that otherwise, government spending will directly or indirectly facilitate private discrimination; that it will help correct the "depressive effect" of private racism on the ability of minorities to compete for public recognition, slots, and benefits; and that it will help compensate for the underpricing or underrating of minorities in private exchanges and markets. See *id.* Each of these rationales could easily be adapted to university affirmative action, both in student admissions and faculty hiring.

had been demonstrably and intentionally racist with respect to candidates precisely like the ones now demanding consideration.⁴⁴ We write in the hope that a middle ground, more commonsense approach will prevail in the Supreme Court, and that institutions of higher education will be permitted to operate affirmative action programs when applicants can show clearcut discrimination that anyone would regard as discouraging upward mobility and the opportunity to gain a college education.⁴⁵ The following sections of this article are aimed at showing that this standard is amply met in Colorado, and, we suspect, elsewhere as well.

Before concluding this section, we offer one parting comment on the issue of common sense. Recently, the two of us were visiting the University of Southern California ("USC"), where one of us was giving a paper at a conference on judicial independence. One morning, with a little time on our hands, we were walking around the attractive, tree-lined campus, admiring the buildings and landscape, when we came across an impressive, medium-size building with a sign above the front door that said "Heritage Hall." The building was locked because it was the weekend. But we later learned that Heritage Hall houses trophies, plaques, and other certificates memorializing accomplishments by USC sports teams, and that similar displays honor scientists, alumni, and other

44. See Richard Delgado, *On Taking Back Our Civil Rights Promises: When Equality Doesn't Compute*, 1989 WIS. L. REV. 579 (discussing doctrine's mirage-like retreat in face of ever more insistent proof). The absurdity of such an approach should be obvious. Consider that a university has a finite number of professors, just as a town has a finite number of homes (especially one, like Boulder, that has enacted growth restrictions). Once these professorships are given out, no more remain to be disbursed. A professor of minority race cannot "buy in" easily, at least without turnover and some other professor's departure, which is a slow and tedious process. And note how two discouragements work: the minority professor of color considering waiting out access knows he or she would, at the end of the line, have few other minority professors to talk with; and that the professors who will judge his or her application will be white and likely to examine the applicant's credentials and accomplishments by traditional, white standards so that articles, books, and syllabi dealing with poverty or race may end up devalued.

45. It is worth noting that an institution's or region's history of discrimination is also relevant to the diversity rationale. It shows (1) how different from the majoritarian comforting tale is the counterstory that minorities are in a position to tell; (2) how different the lives of most minorities have been from those of the majority; and (3) how complicitous past elites have been in the suppression of outsider groups, suggesting how easy it might be for today's leaders to underrate the benefits of a diverse state and university.

figures associated with the school. It occurred to us that most universities probably have such displays, and that school pride and *tradition* are themes that all publicists, university fundraisers, athletic recruiters, and presidents exploit—legitimately—time and time again.⁴⁶ The past, simply, makes a difference—common sense tells us this, but we cannot have it both ways. If universities may point to past accomplishments and use them to build solidarity, institutional loyalty, and pride in achievement, then it seems intuitively obvious that they may not deny the reality—and lingering effect—of past racial behavior and exclusion, even if they occurred some time ago. It is in that spirit, and with that belief, that we offer the results of our research into the history of one society—Colorado—and its institutions of higher learning.

II. COLORADO HISTORY: THE EARLY PERIOD

Colorado's early years were rough and to some extent brutal.⁴⁷ Settlers arrived with high expectations fueled by stories of land and mineral wealth.⁴⁸ Most were disappointed. Mining and farming were hard work; few struck it rich; many soon returned to their states of origin.⁴⁹ Frontier justice prevailed; police forces were nonexistent.⁵⁰ Indians and Mexicans were pushed aside or killed.⁵¹ In 1859, an unidentified black declared himself as good as any white man. Gambler Charles Harrison shot him dead.⁵² A recent writer

46. See Silvia Pettem, *Boulder County History: Wander Historical Treasures at CU*, BOULDER DAILY CAMERA, Jan. 26, 1999, at B8 (describing CU Athletics Gallery, CU in Space Gallery, and Distinguished Alumni Gallery, among other displays of past achievements).

47. See JAMES A. ATKINS, *HUMAN RELATIONS IN COLORADO: A HISTORICAL RECORD* (1968); SARAH DEUTSCH, *NO SEPARATE REFUGE: CULTURE, CLASS AND GENDER ON AN ANGLO-HISPANIC FRONTIER IN THE AMERICAN SOUTHWEST, 1880-1940* (1987); GOODSTEIN, *supra* note 1; LA GENTE: *HISPANO HISTORY AND LIFE IN COLORADO* (Vincent C. de Baca ed., 1998) [hereinafter *LA GENTE*]; STEPHEN J. LEONARD & THOMAS J. NOEL, *DENVER: MINING CAMP TO METROPOLIS* (1990); PATRICIA NELSON LIMERICK, *THE LEGACY OF CONQUEST: THE UNBROKEN PAST OF THE AMERICAN WEST* (1987); QUINTARD TAYLOR, *IN SEARCH OF THE RACIAL FRONTIER: AFRICAN AMERICANS IN THE AMERICAN WEST, 1528-1990* (1998).

48. See ATKINS, *supra* note 47, at 9-24; LEONARD & NOEL, *supra* note 47, at 1-12.

49. See ATKINS, *supra* note 47, at 14, 20-21.

50. See *id.* at 24-25.

51. See *id.* at 41-52.

52. See TAYLOR, *supra* note 47, at 202.

began a review of housing discrimination in Colorado by observing, "[t]he first unfair housing practices occurred with the arrival of the miners and pioneers from the east coast when they took lands from Indians and Hispanics, completely disregarding their rights."⁵³

Whites first arrived in significant numbers in Colorado in the 1850s.⁵⁴ By about 1881, they had driven most Indians off the most desirable lands and onto reservations.⁵⁵ Gold seekers ignored Indian treaty rights; when these became too much of a hindrance, the gold seekers insisted that the federal government force a new treaty relegating two of the largest tribes, the Cheyenne and Arapaho, to reservations.⁵⁶

In 1864, a band of Arapaho went to Fort Lyons, announced their intention to keep the peace and turned over some plunder they had seized in a raid. Soldiers took them into protective custody, fed them, and released them a few days later.⁵⁷ Sent to Sand Creek forty miles away, they were joined by a group of Cheyenne, forming a combined band of about 700.⁵⁸ Colonel John Chivington, a Methodist lay preacher who led a group of recent recruits stationed in the area, was looking for something for his new troops to do.⁵⁹ He attacked the unsuspecting camp, firing without warning. Men, women, and children were shot while fleeing; no prisoners were taken; according to some reports, as many as five to six hundred died, their bodies mutilated, parts cut off by United States soldiers as souvenirs.⁶⁰

53. Eleanor G. Crow, Colorado Civil Rights Commission, *Measuring Housing Discrimination in Colorado 1* (Sept. 1982) (unpublished manuscript, on file with the authors).

54. See U.S. BUREAU OF THE CENSUS, EIGHTH CENSUS OF THE UNITED STATES, 1860 (1864) (showing that Colorado Territory had a total population of 34,277, of which 32,654 were white males, 1577 females, 46 "free colored," and 2261 Indians; the count did not include Spanish-speaking residents, many of whom lived in the San Luis Valley and southern Colorado where their ancestors had settled in the seventeenth century).

55. See ATKINS, *supra* note 47, at 49-51.

56. See *id.* at 43.

57. See *id.* at 45-46.

58. See *id.* at 46.

59. See *id.*

60. See *id.*; see also PATRICIA LIMERICK, WHAT'S IN A NAME? NICHOLS HALL: A REPORT 78-80 (1987); STAN HOIG, THE SAND CREEK MASSACRE (1961) (describing the massacre and events leading up to it).

Sand Creek is only the best known of the Colorado massacres. Two months earlier, in October 1864 at Buffalo Springs, a detachment led by Major David Nichols, who served in the "Bloodless Third" regiment, the same force that attacked the peaceful Indian camp at Sand Creek,⁶¹ killed several Indian women and babies.⁶² Nearly a century later in 1961, the University of Colorado named a residence hall in honor of Major Nichols. When a few detractors called the events at Buffalo Springs to the attention of the university in 1987, it asked a history professor to investigate. When she found some evidence that Nichols had, indeed, played a part in the massacre, "[o]ne regent reviled her 'biased' report."⁶³ Months later, after considerable controversy—twenty-six years after naming the hall for Nichols—the university changed the name of the building to Cheyenne-Arapaho Hall.⁶⁴

61. See Clint Talbott, *Why 'Why' Is a Secret*, BOULDER DAILY CAMERA, Dec. 5, 1998, at C1.

62. See LIMERICK, *supra* note 60, at 83-88.

63. Talbot, *supra* note 61; see also LIMERICK, *supra* note 60. The author found that Nichols "was an enthusiastic and willing founder of the University of Colorado at Boulder. He was also an enthusiastic and willing leader of attacks against Indians [T]o Nichols himself, and to many of his Anglo-American contemporaries, the founding of universities and the killing of Indians represented service in the same cause." *Id.* at 5. The Indians at Sand Creek were "under a guarantee of protection," *id.* at 54, were peaceful, *see id.* at 66-67, and included many women and babies, *see id.* at 86-88. Yet, Nichols and his fellow troops slaughtered at least 120-75, *see id.* at 59, and perhaps as many as 500-700, *see id.*, removing body parts as souvenirs, *see id.* at 58-59. Yet, Colorado locals congratulated Chivington, even while Congress was condemning his action. *See id.* at 88-92.

Did Chivington and Nichols ever repent their actions? No, indeed, their words and correspondence were proud and boastful. *See id.* at 85-86, 92. They believed that exterminating a group of people was good news that should be brought to the attention of fellow Coloradans. *See id.* at 85-86, 92. The author concludes that although most in Colorado do not like to think of it that way, "Colorado [is] a conquered, occupied territory, with a history of racial hatred and violence." *Id.* at 96. In words worth repeating, she observes: "[T]hose of us who benefit from the founding of the University and the conquering of Colorado . . . have come into a complex inheritance." *Id.* at 100.

Was Nichols' behavior at Sand Creek an aberration? No, only six weeks earlier, he had been in charge at the indiscriminate killing of Indian women and probably children at Buffalo Springs. Again, he took pride in his leadership, even though it violated standing orders that "women and children must be spared." *Id.* at 86.

64. See Talbott, *supra* note 61. Colorado's treatment of the Indian minority did not much improve after the era of conquest came to an end. *See Cuthair v. Montezuma-Cortez Colo. Sch. Dist.*, 7 F. Supp. 2d 1152 (D. Colo. 1998), (reviewing that history in a case brought by Native American voters against a school district

Other minority groups fared little better during this period. The gold rush territory of Jefferson (forerunner of Colorado) had very few Negroes, but nevertheless denied them the right to vote, testify in court, or marry whites.⁶⁵ The territorial constitution contained an anti-miscegenation amendment, a version of which stood until 1954.⁶⁶ Frederick Douglass's sons opposed statehood for Colorado in the 1860s because it denied blacks the right to vote.⁶⁷ And, when another version of the Colorado Constitution came before the President for approval of statehood, he vetoed it because it still denied

and members of the board of education under the Voting Right Act). The district court judge in *Cuthair* found "from the facts . . . in this historical background that the Native American people in the United States and in Colorado in particular have been the victims of pervasive discrimination and abuse at the hands of the government . . . and the people . . . of Colorado in particular." *Id.* at 1160. As early as 1862, the Colorado territorial delegate to Congress wrote that mining interests were "entirely overrunning the hunting grounds of Ute Indians . . . taking out large quantities of gold, killing and driving out game," and that despite treaties conferring ostensible protection, "demand for Ute land continued unabated [and] miners continued to push westward." *Id.* at 1156. "Ink on [these treaties] was hardly dry before a major invasion of miners entered Ute lands in violation of the treaty." *Id.* A governor of Colorado appealed to the people to kill Indians as early as 1864; shortly thereafter the Sand Creek surprise attack and massacre took place. *See id.* at 1156-57. The attack received widespread public support in Colorado. *See id.* Even after statehood and their removal to reservations, the press in Colorado covered Indians in a "degrading" fashion evidencing "a keen hatred for the Ute Indians and their way of life." *Id.* at 1157. After Colorado society relaxed its genocidal policy, it decided to integrate Indians into its civilized society; unfortunately, "Indian integration into society meant, among other things, attempts to destroy their culture" by allotting lands away from the tribes to individuals. *Id.* at 1158. Between 1887 and 1934, two-thirds of Indian lands were lost to non-Indians. *See id.* Indian schools forbade young Indian children to speak their ancestral language and taught them to disdain Indian culture. *See id.* Unfriendly teachers, even in modern times, whipped Indian children and required them "to cut off their traditional braids and long hair." *Id.* at 1160. On the reservation, poverty, sickness, and high dropout rates at school ran rampant. *See id.* Even today, bilingual or bicultural education is practically nonexistent. *See id.* The court concluded: "The plight of the Ute Mountain Utes was a particularly dire one. In the 1960s, there were only just over 900 tribal members and their infant mortality rate was so high that their death as a viable cultural group could be predicted." *Id.* at 1159.

65. *See ATKINS, supra* note 47, at 19.

66. *See id.* at 26. On the reversal of the amendment, see Act of Mar. 14, 1957, ch. 124, § 1, 1957 Colo. Sess. Laws 334.

67. *See LEONARD & NOEL, supra* note 47, at 192; *see also* Videotape: Old West, New West: Black West, Myth and Meaning in African American Regional History (videotaped address by Quintard Taylor, delivered Mar. 11, 1995, at Boulder Public Library) (videotape on file in the Boulder Public Library) (detailing a campaign by about 150 Colorado blacks to call national attention to disenfranchisement in Colorado).

blacks that right.⁶⁸ Perhaps not suprisingly, by 1869 the black population of Denver was still very small. But black school-children nevertheless were shunted to an improvised school at a church to prevent them from mingling with whites.⁶⁹

The Chinese came to Colorado during territorial days, beginning around 1869, to work in the mines and railroads as cooks, launderers, and laborers.⁷⁰ Unpopular in California and elsewhere,⁷¹ they also drew the attention of the *Rocky Mountain News*, which conducted a campaign against them.⁷² Focusing on Denver's small Chinatown, it accused the residents of operating opium dens, gambling parlors, and houses of prostitution, whipping up sentiment that resulted in the Hop Alley Riot, in which many Chinese had their homes burned and a small number died.⁷³ A century later, the Colorado Department of Education reported, unsurprisingly, "[t]he Chinese are a very small minority group at present."⁷⁴

The Hop Alley Riot began when a group of whites started a quarrel at a saloon.⁷⁵ Conditions had been tense; the Democrats had warned prior to the 1880 election that "if the Republicans won, 'the pest of the Pacific Coast' would invade Denver."⁷⁶ When the first Chinese workers arrived as railroad hands in 1869, they worked for less than whites would and

68. See Ed Quillen, *What's So Noble About "Traditional Colorado Values"?*, DENV. POST, Oct. 29, 1998, at B9.

69. See LEONARD & NOEL, *supra* note 47, at 27.

70. See COLO. DEP'T OF EDUC., A HISTORY OF CIVIL RIGHTS AND MINORITY GROUPS IN COLORADO 4 (1975); GOODSTEIN, *supra* note 1, at 138.

71. See BILL ONG HING, TO BE AN AMERICAN: CULTURAL PLURALISM AND THE RHETORIC OF ASSIMILATION 17 (1997).

72. See GOODSTEIN, *supra* note 1, at 138; COLO. DEP'T OF EDUC., *supra* note 70, at 4.

73. See ATKINS, *supra* note 47, at 111-12; GOODSTEIN, *supra* note 1, at 138-39. Note the irony in the newspaper's campaign against the Chinese for operating opium dens and houses of prostitution, as though the rough-hewn miners and entrepreneurs who lived in Denver then never touched a drop of liquor nor leered at a woman in a bawdy house!

74. COLO. DEP'T OF EDUC., *supra* note 70, at 4; see LEONARD & NOEL, *supra* note 47, at 186. A Colorado Bureau of Labor Statistics report complained that "one Chinaman does as much work as any two men or women because he will work day and night and also Sunday," and so 1002 Chinese were displacing 2000 whites from laundry jobs. *Id.* By 1920, only 212 Chinese were left in Denver. See *id.*

75. See GOODSTEIN, *supra* note 1, at 138. See generally ATKINS, *supra* note 47, at 111-12.

76. GOODSTEIN, *supra* note 1, at 138.

came to be disliked as "scabs."⁷⁷ By 1880, their numbers in Denver stood at only 238, but Democrats played on fears that this number might increase; the *Rocky Mountain News* predicted that if the Republicans won, "hordes" would descend on Colorado.⁷⁸ In this setting, on October 31, 1880, a mob gathered after a fight at a saloon, shouting, "Down with Chinese."⁷⁹ Running through the streets of the city, it assaulted all who looked Chinese and looted Chinese businesses. Police looked the other way.⁸⁰ Most of Chinatown was destroyed.⁸¹ Whites who participated in the murder were tried, but acquitted.⁸² And the *Rocky Mountain News* increased the virulence of its attack in the wake of the riot.⁸³

Thirteen years later, the anti-Chinese riot was followed by the "Death to the Dago" riot, which also began after a dispute in a bar.⁸⁴ Depression-era sentiment against the Italians was running high, just as it had earlier against the Chinese, because like them, the Italians took menial jobs now needed by whites.⁸⁵ An unemployment demonstration to demand welfare relief turned into a demand to avenge a tavern owner, Lightfoot, who was allegedly killed by an Italian.⁸⁶ Ten thousand strong, a mob went to the prison where Lightfoot's attacker was held, broke in, and hanged him.⁸⁷

About the same time, a black boy was reported to have killed Louise Front, a "well developed" girl of eleven years.⁸⁸ A sixteen-year-old black boy was arrested and put on the train to Limon.⁸⁹ Governor Charles S. Thomas said that hanging was too good for him.⁹⁰ The *Denver Post* wrote that the youth had "[n]o hope to escape lynchers."⁹¹ True enough, masked men stopped the train, seized the youth from the custody of the

77. *See id.*

78. *See id.*

79. *See id.* at 138.

80. *See id.* at 138-39.

81. *See id.* at 139; ATKINS, *supra* note 47, at 112.

82. *See* GOODSTEIN, *supra* note 1, at 139.

83. *See id.*

84. *See id.*

85. *See id.*

86. *See id.* at 141.

87. *See id.* at 141-42.

88. *See id.* at 144.

89. *See id.* at 146.

90. *See id.*

91. *Id.*

accompanying sheriff, who offered no resistance, poured kerosene over the boy, and burned him to death.⁹² Governor Thomas opposed prosecution of the perpetrators, saying their acts were regrettable but necessary to uphold Anglo-Saxon justice.⁹³ National commentators decried the "primitive, uncivilized quality of life in Colorado,"⁹⁴ but Thomas was elected U.S. Senator and served from 1913 to 1921.⁹⁵

Early Mexican families, who had resided in Colorado since well before the arrival of the white settlers, lost farms and land grants ostensibly protected under the Treaty of Guadalupe Hidalgo, which ended the Mexican American War.⁹⁶ In that war, acting on a pretext, the United States seized half of Mexico's territory, its army marching all the way to Mexico City and dictating terms of surrender.⁹⁷ Still, the Treaty provided that Mexican land rights would be respected, which proved no obstacle for the advancing and land-hungry whites. Abetted by the federal government, the region set up rules regarding surveying and land registration, which the Mexicans found impossible to meet.⁹⁸ Mexican Americans lost eighty percent of their original land grants, some to conniving lawyers and land developers,⁹⁹ others because of high property taxes imposed on Mexican-American owners—in some cases five times higher than those paid by their Anglo neighbors.¹⁰⁰

92. *See id.*

93. *See id.*

94. *Id.*

95. *See id.*

96. *See* Charles S. Vigil, *Mexican Land Grants in Colorado*, in *THE HISPANIC CONTRIBUTION TO THE STATE OF COLORADO* 65, 67, 74 (José de Onís ed., 1976).

97. *See id.*

98. *See id.*

99. *See* LIMERICK, *supra* note 47, at 237; *see also* Rodolfo O. de la Garza, *Chicano Political Power: An Increasingly Important Role*, *DENV. POST*, Nov. 25, 1979, (*Empire Magazine*) at 12 (complex legal arguments, unfamiliar to Chicano farmers, used to strip them of their water rights, then their lands); Robert Sandoval, *Colorado's Hispanic Heritage*, *DENV. POST*, Nov. 25, 1979, (*Empire Magazine*) at 26 (deeds mysteriously disappeared; surveying requirements were imposed on traditional land-owners; entire land grants were invalidated for technical reasons; exorbitant taxes were imposed; vigilantes drove owners out by force or tricked them into signing papers represented as grazing leases but that actually conveyed permanent title; government took large tracts of ancestral lands for parks).

100. *See* Sandoval, *supra* note 99.

In 1880, Susan B. Anthony toured Colorado on behalf of female suffrage.¹⁰¹ She failed, the region voting the other way.¹⁰² Afterward, she blamed her failure on "Mexican greasers" whose ignorance contrasted with white cultivated men, "just men, men who could think."¹⁰³ One reason why Mexicans may have looked dimly on her campaign is that the suffrage movement attacked Catholicism and was allied with temperance, while social drinking on festive occasions had long been a hallmark of Mexican culture.¹⁰⁴

Even sober Mexicans who were uppity or in the way were, like blacks, simply lynched.¹⁰⁵ Leadville, Colorado, a mining town, expelled Chinese when they were no longer needed.¹⁰⁶ Denver lynched them.¹⁰⁷ And Frederick Pitkin was elected governor in 1878, running on a platform that included the slogan "the Utes must go."¹⁰⁸ By 1895, most Denver hotels, theaters, and restaurants denied admission to blacks.¹⁰⁹

III. THE KLAN PERIOD

Colorado's early period, from about 1850 to about 1920, was marked not so much by affirmative mistreatment of minorities as by simple greed. Most of the state's early industry was extractive; the newcomers came to take rather than to give or build. If Indians or Mexicans got in the way, that was too bad. They were pushed aside, sometimes killed—but almost as though without malice. Brutality, although frequent, was casual and spontaneous. At times, Italian and Chinese laborers were tolerated, even treated as co-venturers. However, during hard times, as in the depression of the mid-1880s, competition for the few jobs and businesses sharpened, and intergroup hostility increased. As these immigrant laborers became surplus, no longer wanted for some reason, sentiment against them exploded into violence. Otherwise,

101. See DEUTSCH, *supra* note 47, at 101-02.

102. See *id.*

103. *Id.*

104. See *id.* at 102.

105. See ATKINS, *supra* note 47, at 87, 98.

106. See Quillen, *supra* note 68.

107. See *id.*

108. See *id.*

109. See TAYLOR, *supra* note 47, at 204.

conditions for minorities remained roughly constant or even improved slightly into the new century.

With the end of World War I, friction increased as returning servicemen and women of color began to assert their rights. Having recently fought a war to make the world safe for democracy, many were not prepared to return quietly to the previous regime of menial jobs and shuffling acquiescence. Early activism appeared on the scene.¹¹⁰ The Denver NAACP formed and began organizing.¹¹¹

The counter-reaction was not long in coming. In 1920, Claude DePriest, a black fireman, bought a home in Denver at 2649 Gaylord, two blocks east of Race Street, a locally understood racial barrier.¹¹² Although the family's next-door neighbor told the *Denver Post*, "I'd rather have them for neighbors than some white folks," the Clayton Improvement Association of white homeowners warned DePriest that "if you continue to reside at your present address, you do so at your own peril."¹¹³ The DePriests ended up selling.¹¹⁴

In 1921, Walter R. Chapman, a black post office clerk, rented a home at 2112 Gilpin.¹¹⁵ A white stranger told him, "If you move here your house is going to get blown up."¹¹⁶ Sure enough, late in the evening of July 7, 1921, a bomb blasted a hole in Chapman's front lawn and broke his windows.¹¹⁷ When Chapman moved, another black, Charles E. A. Starr, occupied the house, which was again bombed on November 15 of the same year.¹¹⁸ It was against a background of events such as these that Colorado entered its Klan period.

Nationwide, Klan membership by 1920 consisted of only 4000 or 5000 "knights" scattered throughout the South, mainly in Georgia and Alabama.¹¹⁹ Enrollment surged in the following

110. On these early post-World War I days, see JAMES A. ATKINS, *THE AGE OF JIM CROW* (1964); GOLDBERG, *supra* note 1. On whites' sense of bland innocence as they slaughtered Indians and colonized the West, see LIMERICK, *supra* note 47, at 42, 46.

111. See ATKINS, *supra* note 110.

112. See LEONARD & NOEL, *supra* note 47, at 193 (footnote omitted).

113. *Id.* (footnotes omitted).

114. See *id.*

115. See *id.*

116. *Id.* (footnote omitted).

117. See *id.*; TAYLOR, *supra* note 47, at 236.

118. See LEONARD & NOEL, *supra* note 47, at 193.

119. See GOLDBERG, *supra* note 1, at 4.

year due to the Klan's vigorous recruitment efforts, so that membership stood at three to six million in the United States by 1924.¹²⁰

During this period, Colorado was virtually taken over by the Klan. Although Klan domination meant all minorities were threatened, the Klan in Colorado placed Catholics and Jews high on their list of targets, perhaps because the numbers of minorities of color were relatively small.¹²¹ Since many Latinos were Catholic, however, Klan aggression targeted them as well.

One writer has hypothesized that Denver was susceptible to the Klan's influence because of "an actual breakdown in law and order and challenges from minority groups."¹²² Whatever the reason:

Under [Grand Dragon John Galen] Locke, the Klan spread like brushfire. Sessions soon overflowed the first meeting place. They were moved . . . finally [to] South Cable Mountain near Golden. On Monday nights, weather permitting, autos lined the route west to the burning cross at the foot of Cable Mountain. . . . At its height the Colorado Klan . . . had a membership of between 50,000 and 55,000. Colorado reportedly raised \$1,170,000 in initiation fees, of which \$670,000 went to Atlanta. Initiation cost \$10, which included the cost of hood and robe.¹²³

120. *See id.* at 4-5.

121. *See id.* at 8-10. On Klan persecution of Catholics, see John Galen Locke (oral history tape), *supra* note 1 (reporting the Klan would hold mass meetings at which members displayed signs listing Catholic-owned firms and urged: "These firms are un-American. Do not patronize them.").

122. GOLDBERG, *supra* note 1, at 12. On the role of Colorado's American Protective Association, a Klan forerunner, see ATKINS, *supra* note 47, at Part II.

123. John Galen Locke (oral history tape), *supra* note 1 (interviewing Denver District Judge Joseph E. Cook). John Galen Locke emerged as the leader of the Colorado Klan. Born in New York on September 6, 1873, he had been educated as a quack physician, a doctor of homeopathy. He did not believe in the germ theory of disease and was refused membership in the Colorado Medical Society. Nonetheless, he operated a clinic at 1345 Glenarm Place, right next to the anti-Semitic Denver Athletic Club. *See id.*

Locke had originally come to Denver in 1893. A short, fat man, he weighed 250 pounds and sported a Vandyke beard with a carefully trimmed mustache. Adept at staring down opponents, he was sometimes called a "Buddha with a goatee." *Id.* His voice was high and squeaky, the result of a knife wound he had received during a brawl in London. *See* GOODSTEIN, *supra* note 1, at 243.

According to the late Monsignor Matthew Smith, editor of the *Catholic Register*: "Most of the [news]papers in Colorado simply crawled into holes in the early phases of the Klan."¹²⁴ The Klan in Denver was a well-organized group with strong leadership. After an initial recruitment foray into the city met with opposition, the organization withdrew for a year and then returned with a different approach: they masked their aggression with acts of benevolence, which included donations to the YMCA and destitute widows, and a facade of concern for the community.¹²⁵ They did not hesitate to employ traditional means, however.

For instance, the Klan forced a black janitor to leave town because of his friendships with whites.¹²⁶ The Klan also threatened George Gross, the head of the local NAACP.¹²⁷ These events provoked a grand jury investigation and the continued opposition of District Attorney Philip Van Cise to the Klan throughout the group's years of prosperity.¹²⁸ However, Denver never managed to muster strong opposition to the Klan, either through the government, the media, the churches, or private citizens' groups.¹²⁹

Existing social conditions also helped the Klan. In the 1920s, Denver suffered a sharp increase in prostitution, bootlegging, and prohibition violations; police were inefficient and corrupt.¹³⁰ The Klan capitalized on these problems, promising to clean up Denver.¹³¹ A mayoral election provided their first opportunity to test their political influence. Benjamin F. Stapleton was the Klan's choice for mayor in 1923.¹³² Although he publicly condemned the Klan, he was a close friend of Dr. John Galen Locke, Grand Dragon appointed by the Imperial Wizard, the national leader of the Klan.¹³³ Once elected, Stapleton appointed Klansmen to various

124. John Galen Locke (oral history tape), *supra* note 1 (quotations from memoirs of Monsignor Matthew Smith read on the tape).

125. See GOLDBERG, *supra* note 1, at 14, 16.

126. See *id.* at 17.

127. See *id.*

128. See *id.*

129. See *id.* at 18.

130. See *id.* at 20-21.

131. See *id.*

132. See *id.* at 30.

133. See *id.* Grand Dragon is the term for the Klan's leader in a particular state.

important posts, including City Accountant, Manager of Safety, City Attorney, Justice of the Peace, Manager of Revenue, Clerk Recorder, and Manager of Improvements and Parks.¹³⁴ Denver District Judge Clarence Morley also was a Klansman.¹³⁵ Courts often drew juries from Klan membership lists, and "Klan jury tampering intensified after the 1924 elections."¹³⁶

A year after his election, under direct pressure from the Klan, Mayor Stapleton appointed a devoted Klansman, William Candlish, as chief of police.¹³⁷ A former newspaper editor, state senator, and radium experimenter with no prior police experience, Candlish's only qualifications were his Klan membership and subservience to Locke.¹³⁸ Under his leadership, Klan domination of the police department was brazenly open. Any Protestant policeman who refused to fill out a Klan membership application was relegated to night shifts on undesirable beats.¹³⁹ Candlish began to enforce an "old Denver law, prohibiting Greek, Japanese, Chinese, Mexican, and black businessmen from employing white women. The Klan . . . even requisitioned men and vehicles from the [police] department."¹⁴⁰

With Klansmen in the positions of Mayor, Chief of Police, and Justices of the Peace, the Klan wielded great power. At one point in 1923, eleven wooden crosses were lit simultaneously across the city.¹⁴¹ Mayor Stapleton took no action because the Klan-dominated police department found no evidence of any cross-burnings.¹⁴² The Denver City Council's demand for a full investigation was ignored.¹⁴³ Prosecution was out of the question: according to oral testimony of citizens of that period, the Klan faithful would simply have requested a

134. *See id.*

135. *See id.* Morley later became governor. *See id.* at 84.

136. *Id.*

137. *See id.* at 32.

138. *See id.*

139. *See id.* at 33.

140. *Id.*

141. *See id.* at 31.

142. *See id.* This, even though cross-burnings during this period were legion. *See infra* notes 210, 220-26 and accompanying text (oral history of cross-burnings and similar Klan activity in Colorado).

143. *See* GOLDBERG, *supra* note 1, at 31.

change of venue to one of several courts with a Klan justice of the peace.¹⁴⁴

On May 13, 1924, Grand Dragon Locke outlined a further plan to gain control of Colorado's two U.S. Senate seats, the governorship, the state legislature, and many county offices.¹⁴⁵ Every county was assigned a Klan major, who then appointed a captain for each block of six precincts.¹⁴⁶ The captain appointed a sergeant for every precinct, and corporals if there were more than six Klansmen in the precinct.¹⁴⁷ The sergeants and corporals found and registered voters, "inducing them to vote."¹⁴⁸ Their discipline, cohesiveness, and grassroots approach caught their opponents off guard.¹⁴⁹

As election day drew near, the Klan turned to the Republican party, finding it more amenable to its activities and a better electoral vehicle than its own independent party. In the Republican primary, the Klan had little support on the Western Slope and only a little more in southern Colorado.¹⁵⁰ But the Denver area was the Klan's great strength. At party caucuses and conventions, "[t]o increase its leverage, the Klan stationed Denver police officers at the entrance to the [precinct] meeting with orders to deny admittance to 'anyone who was not a member of the klan and, except delegates, no one but klansmen had tickets.'"¹⁵¹ When the state Republican convention met, the Klan held less than one-third of the delegates.¹⁵² They received enough votes, however, to make it onto the primary ballot.

Once on the ballot, the Klan candidates downplayed their Klan ties in order to broaden their Republican base. At the same time, however, Klan leaders issued a decree that failure to register to vote was sufficient cause for suspension from the

144. See John Galen Locke (oral history tape), *supra* note 1.

145. See GOLDBERG, *supra* note 1, at 68.

146. See *id.*

147. See *id.*

148. *Id.*

149. See *id.* at 69. The Klan used grassroots methods for gaining power in 1924 throughout the state. One tactic was the promise of a salary of \$100 per week for a quota of fifty new members. See *id.* at 69. By election day 1924, Klan leaders could muster the votes of 35,000 to 40,000 knights of the Invisible Empire throughout the state. See *id.*

150. See *id.* at 71-72.

151. *Id.* at 72-73 (quoting a *Denver Post* article appearing on August 5, 1924).

152. See *id.* at 73.

organization.¹⁵³ District Attorney Van Cise, who had organized to fight the Klan, attempted to hold a meeting to expose their secrets and condemn their "attempts to ruin Catholic businessmen, influence judges and juries, and disrupt the Republican party."¹⁵⁴ But Locke ordered the auditorium filled with Klansmen and women who shouted, shrieked, and jeered until the speaker was unable to be heard.¹⁵⁵ Forty policemen could not quiet the crowd. Van Cise gave up at one a.m. and left as Klansmen sang "Onward Christian Soldiers."¹⁵⁶

On primary election day, the Klan put "pink tickets" under every door and in the mailboxes of all their neighbors, listing all candidates as Protestant, Catholic, or Jewish.¹⁵⁷ Protestants who were considered sympathetic to Catholics were marked with a star.¹⁵⁸ Locke reminded his members that they were not Republican or Democrat, but Klansmen.¹⁵⁹ Bloc voting paid off: Klan candidates won nomination for every state office except superintendent of public schools.¹⁶⁰

The Klan vote was strengthened by some staunch party line Republicans who would support them although they might be against them in principle.¹⁶¹ Clarence Morley, an admitted Klansman, was the chosen candidate for governor, and Rice Means, Denver's City Attorney, for the short-term Senate vacancy.¹⁶² Means joined the Klan to help his political career.¹⁶³ Both candidates adopted a moderate stance and tried to downplay the Klan issue, although Morley hired a Klan campaign manager and spoke at numerous Klan meetings.¹⁶⁴ Senator Lawrence Phipps, up for re-election, was not a Klansman, but had gained Klan support by making a large contribution to their campaign.¹⁶⁵ He refused to

153. *See id.* at 75.

154. *Id.* at 75-76.

155. *See id.* at 75-76.

156. *See id.* at 76.

157. *See id.* Presumably, it was not necessary to list black or Hispanic candidates, as there were none. *See infra* Part IV.C.

158. *See* GOLDBERG, *supra* note 1, at 76.

159. *See id.*

160. *Id.* at 77.

161. *See id.* at 78-79.

162. *See id.* at 70.

163. *See id.*

164. *See id.*

165. *See id.* at 71.

acknowledge the Klan publicly, but Locke directed votes for him as their agreed candidate.¹⁶⁶

On November 4, 1924, the Klan won control of Colorado. Morley, Means, and Phipps were all elected.¹⁶⁷ Klan-supported candidates were elected to the offices of Lieutenant Governor, Secretary of State, Attorney General, Superintendent of Public Instruction, and State Supreme Court Justice.¹⁶⁸ Only two Democratic candidates won; both had the endorsement of the Klan.¹⁶⁹

In Denver, "only three district judgeships and the juvenile court escaped Klan nets."¹⁷⁰ At a Klan celebration in a stadium in south Denver, "[a]n estimated 35,000 persons, including 5,000 new recruits, heard the Imperial Wizard laud Locke, his knights, and the future leaders of the state of Colorado."¹⁷¹ Klan-backed candidates also won offices in Boulder, Pueblo, Weld, and many other Colorado counties.

Governor Morley, submissive and ineffectual, was in constant contact with Locke, seeking the Grand Dragon's instructions.¹⁷² In his inaugural address, Morley proposed legislation aimed at Catholics. One plan prohibited the use of sacramental wine, with the intention of making Mass illegal.¹⁷³ A second measure would have created a women's reformatory "as an alternative to the 'sinister' Houses of the Good Shepherd."¹⁷⁴ Morley also abolished a dozen government bureaus, calling them too expensive or inefficient. These included the State Tax Commission, Board of Corrections, Board of Health, and Board of Nursing Examiners.¹⁷⁵ This tactic was part of his plan to place Klansmen in as many positions of power as possible.¹⁷⁶ Because the Governor's

166. *See id.*

167. *See id.* at 81.

168. *See id.*

169. *See id.* Benjamin Stapleton, who was a Klan fellow-traveler, was elected Mayor of Denver. When his sympathies became known, opponents forced a recall election. City voters enthusiastically voted for him a second time. *See GOODSTEIN, supra* note 1, at 243. Not content with that, they also named Denver's new airport after him.

170. GOLDBERG, *supra* note 1, at 82.

171. *Id.*

172. *See id.* at 85.

173. *See id.*

174. *Id.*

175. *See id.* at 86.

176. *See id.*

appointment power was severely limited under the state constitution, he proposed bills abolishing various government bureaus, followed by others reestablishing them under new names, with new appointments.¹⁷⁷ A Klan machine, firmly entrenched in the various arms of the state government, would thus continue to rule after the Morley years.¹⁷⁸ Indeed, the Klan was to remain the largest, most efficient political force in Colorado for several years.¹⁷⁹

Morley openly continued with his Klan obligations throughout his governorship, regularly attending klavern meetings and special events.¹⁸⁰ He invited Grand Dragon Locke to attend Calvin Coolidge's presidential inauguration with the Colorado delegation.¹⁸¹ In 1926, Morley "led a [procession] of 500 Denver men down Sixteenth Street, stopped in front of a clothing store, and demanded" that the owner fire employees lacking Klan credentials.¹⁸²

In the state legislature, it was only the stubborn resistance of a handful of state senators that prevented a wholesale Klan takeover in both bodies. The Colorado House of Representatives had an overwhelming Republican majority of fifty-two to thirteen.¹⁸³ Many of the Republicans and some of the Democrats were either Klansmen or elected with Klan support. There were not quite enough Klansmen to carry a clear majority, but the Republican Klansmen had the alliance of other Republicans who were loyal to the party and could therefore dominate the House.¹⁸⁴ The Colorado Senate was the last bastion against Klan rule. With twenty-one Republicans and fourteen Democrats, all but three of the Democrats resisted Klan allegiance and nine Republicans also stood against the organization.¹⁸⁵

Legislation sponsored by individual Klansmen in the House included a bill prohibiting epileptics, drug addicts,

177. *See id.*

178. *See id.*

179. *See generally id.* at 3-48.

180. *See id.* at 86-87. "Klavern" is the Klan term for a secret cell.

181. *See id.* at 87.

182. *Id.*

183. *See id.*

184. *See id.*

185. *See id.*; *see also* John Galen Locke (oral history tape), *supra* note 1, at Side 1 (interview with Henry Tolle, one of the six Republican senators not indebted to the Klan).

drunkards, or people charged with a felony from marrying, and one proposing "the sterilization of epileptics, the retarded, and the insane if procreation might result in 'defective or feeble-minded children with criminal tendencies.'"¹⁸⁶ Others would rescind Colorado's public accommodations law, abolish the juvenile court, enforce Sunday closing laws, and prohibit immigration to the state and ownership of property by foreign nationals.¹⁸⁷

When political persuasion proved ineffective, the Klansmen resorted to threats. At one point, Morley threatened to cut appropriations for the University of Colorado if President Norlin did not dismiss all Catholic and Jewish faculty.¹⁸⁸ One state senator was told there would be no funds for the state hospital if he did not vote with the Klan.¹⁸⁹ When Morley's plan to abolish and reestablish dozens of state agencies was defeated, Klansmen responded by refusing to appropriate funds for the state fair and the University of Colorado.¹⁹⁰ Morley also vetoed staff salary appropriations for the State Tax Commission, the Board of Health, Public Examiner's office, and several others, effectively crippling these agencies.¹⁹¹

On occasions when the Klan's power was frustrated in the legislative branch, Governor Morley employed the administrative branch. On June 10, 1925, he commissioned fifty-two prohibition agents and resurrected an old anti-liquor law granting terrifying power to the agents, vesting all authority "in the district attorneys, sheriffs, constables and police officers of the state."¹⁹² The number of agents grew to 200, many of whom kept their identities secret.¹⁹³ Morley's henchmen frequently would raid the houses of Klan opponents, including a raid in Trinidad, Colorado nine days after Morley's

186. GOLDBERG, *supra* note 1, at 88 (quoting H.B. 60, 25th Gen. Ass. (Colo. 1925)).

187. *See id.* at 89, 206 n.7.

188. *See id.* at 90; *see also* Knox, *supra* note 1, at 11 (citing a 1939 letter from President George Norlin responding to the Klan's intimidation and praising Norlin for refusing to cave in to the threat).

189. *See* GOLDBERG, *supra* note 1, at 90.

190. *See id.* at 92.

191. *See id.*

192. *Id.* at 93 (quoting COLO. GEN. ASSEMBLY, LAWS PASSED AT THE 20TH SESSION OF THE GENERAL ASSEMBLY OF THE STATE OF COLORADO 286 (1915)).

193. *See id.*

initial appointment, in which they "battered in the doors of fifty homes without identifying themselves, drew revolvers, and lined up the frightened men and women for search."¹⁹⁴ Although Judge A.T. Hollenbeck freed the thirteen people the agents had arrested because the agents had no search warrants, the Klan "prohibition agents" continued to abuse their power. For instance, when agents arrested twelve men during a raid in Weld County, the justice of the peace fined them and then divided the fines among the agents.¹⁹⁵

Similar violations of constitutionally-protected rights took place throughout Colorado in 1925.¹⁹⁶ When the large Immaculate Conception Cathedral was built on Colfax Avenue in Denver, the Ku Klux Klan suggested bombing it. However, Locke vetoed the plan, saying the Catholics would simply use the insurance proceeds to erect an even larger church.¹⁹⁷

With these acts, the Klan went too far. People were finally willing actively to resist the Klan's terror. The Denver County Jail "refused to accept any prisoners taken by 'the governor's Russian helpers.'"¹⁹⁸ Similarly, the district attorneys for Denver, Adams, and other counties threatened to charge any agents guilty of violating citizens' rights.¹⁹⁹ A public outcry finally caused the prohibition commission to be revoked on December 31, 1925.²⁰⁰

The Klan and Denver's Black Minority

By 1920, Denver's population stood at 256,000 persons, with only 6075 black residents.²⁰¹ The city had few ethnic neighborhoods.²⁰² Blacks were confined mainly to Five Points, an old and deteriorating neighborhood east of downtown and north of Capitol Hill.²⁰³

194. *Id.*

195. *See id.*

196. *See id.*

197. *See* LEONARD & NOEL, *supra* note 47, at 197.

198. GOLDBERG, *supra* note 1, at 94 (quoting an article appearing in the *Denver Post* on November 23, 1925)

199. *See id.* at 93.

200. *See id.* at 94.

201. *See id.* at 13.

202. *See id.*

203. *See id.* at 25; *see also infra* Part IV.A.2.

In 1915, the Denver NAACP chapter opened, and Denver's black minority began to resist the Klan.²⁰⁴ Two black newspapers, the *Colorado Statesman* and the activist *Denver Star*, published events of interest to the black community.²⁰⁵ In 1916, the small black population successfully blocked a plan to legalize housing segregation in Denver.²⁰⁶ For their pains, they received an anonymous threat to reactivate the Klan,²⁰⁷ but the community persevered. In 1920, a black man brought suit against the city when a whites-only public tennis court refused him admission.²⁰⁸ A black woman did the same when she was thrown out of a municipal auditorium because she refused to sit in the section reserved for blacks.²⁰⁹ Dr. Clarence Holmes, the president of Denver's NAACP, began a movement to integrate downtown movie theaters. The Klan burned a cross on his front lawn and sent him a threatening letter.²¹⁰ Sam Cary, the first black to practice law in Colorado, had a large clientele made up of Indians, blacks, and Mexicans, whom white lawyers shunned.²¹¹ A few years later, he was disbarred, ostensibly because of an infraction having to do with client funds, but according to many blacks because of sheer prejudice.²¹²

Black students at Denver's East High School tried to enter a dance for white students only, with the support of several black organizations.²¹³ The Denver PTA and the Parkhill Improvement Association decided to advocate racially separate schools as a result.²¹⁴ The Klan offered a compromise: integrated schools and racially segregated social events.²¹⁵ Later that year, the Denver School Board ordered black and

204. See GOLDBERG, *supra* note 1, at 25.

205. See *id.*

206. See *id.*

207. See *id.*

208. See *id.*

209. See *id.*

210. See *id.*; see also *infra* text accompanying notes 221-26 (describing an oral history of Klan activity).

211. See BILLIE A. GRANT ET AL., *GROWING UP BLACK IN DENVER* 20 (1988) (quoting family members of Cary as saying, "[n]early half of Denver owed him money").

212. See *id.* at 20-21. He was reinstated nine years later.

213. See GOLDBERG, *supra* note 1, at 25.

214. See *id.*

215. See *id.* at 25-26.

white students to attend separate social functions.²¹⁶ Black residents brought suit, and the Colorado Supreme Court reversed a lower court ruling and declared the board's action unconstitutional.²¹⁷

By contrast, attempts by black Denverites to move to white neighborhoods met a violent response. Mrs. Emma Davis was threatened by a white mob and left her home in a predominantly white neighborhood at 2450 Gaylord Street in 1920.²¹⁸ The spokesman for that mob was later elected District Attorney, with the Klan's help.²¹⁹ At least three homes were bombed.²²⁰ An oral history of the period mentions Klan cross-burnings on front lawns of blacks, activists or not,²²¹ white supporters,²²² blacks who moved to white areas,²²³ black professionals,²²⁴ and blacks who had the effrontery to become business partners with whites.²²⁵ One black real estate worker who encouraged fellow blacks to buy outside the black area would sometimes sit up all night with a gun in his lap, fearing a visit from the Klan.²²⁶ The Capitol Hill Improvement Association pressed for Jim Crow laws that would assure school and residential segregation.²²⁷ Other community organizations followed suit²²⁸ or called upon property owners to sign covenants restricting the sale of their homes to members of the white race.²²⁹

On January 27, 1922, black janitor Ward Gash received a threatening letter from the Klan accusing him of using bad language in the presence of white women and of having intimate relations with one, and ordering him to leave town.²³⁰ Gash did leave town, but first reported the threat to District

216. *See id.* at 194 n.57.

217. *See id.*; *Jones v. Newlon*, 253 P. 386 (Colo. 1927).

218. *See* GOLDBERG, *supra* note 1, at 26.

219. *See id.* at 194 n.58.

220. *See id.* at 26.

221. *See* GRANT ET AL., *supra* note 211, at i, 33, 55, 67.

222. *See id.* at 39.

223. *See id.* at 17-18.

224. *See id.* at 8. Another black professional did not suffer a cross-burning, but reported that the Klan threatened to run him out of Denver. *See id.* at 51.

225. *See id.* at 73.

226. *See id.* at 51.

227. *See* GOLDBERG, *supra* note 1, at 26.

228. *See id.*

229. *See id.* On the widespread use of these covenants, see *infra* Part IV.A.

230. *See* GOLDBERG, *supra* note 1, at 17.

Attorney Van Cise.²³¹ Shortly thereafter, a grand jury began a probe of the Klan. After a second threat to George Gross, president of Denver's NAACP, Van Cise decided to add covert means to his arsenal, sending five men to infiltrate the Klan as spies.²³² Still, most Protestant ministers, educators, and editors declined to speak out, apparently fearing retaliation. According to one historian, "[a] man did not fear his minister's censure or neighbor's scorn when he enlisted in the secret society. The movement operated in a community devoid of widespread public hostility and a meaningful opposition."²³³

African Americans who grew up in this period report that prejudice was a way of life. As children, they recall being unable to go to the Fun House, an area amusement park, or play in Washington Park.²³⁴ Seventeen thousand Denver men became Klansmen,²³⁵ and others joined in surrounding counties such as Boulder.²³⁶ Even a segment of the black community supported Mayor Stapleton and his Democratic Party.²³⁷

The Klan was successful in other Colorado cities as well. For instance, Pueblo's population in 1920 was 43,050, with 1395 black persons.²³⁸ One-third of the city was Roman Catholic.²³⁹ Mexicans and Italians comprised the city's two largest ethnic groups; the steel mills and coal mines also attracted a large immigrant population, including Austrians, Slovenes, Greeks, and Japanese, that made up seventeen percent of the population by 1920.²⁴⁰ Pueblo's Commissioner of Public Safety publicly asserted that the city's problems with crime (bootlegging and gambling) were the fault of the "foreign

231. *See id.*

232. *See id.*

233. *Id.* at 29.

234. *See* GRANT ET AL., *supra* note 211, at 32.

235. *See* GOLDBERG, *supra* note 1, at 29.

236. *See infra* Part VI.B (Boulder Klan stronghold).

237. *See* TAYLOR, *supra* note 47, at 232; GRANT ET AL., *supra* note 211, at 46-47 (Stapleton intervened when a black was hassled at a golf course). *But see* GRANT ET AL., *supra* note 211, at 53 ("As long as Mayor Stapleton was in office [25 years], there was discrimination in Denver in theaters, restaurants, swimming pools and tennis courts.").

238. *See* GOLDBERG, *supra* note 1, at 60.

239. *See id.*

240. *See id.* at 60-61. Poorly paid and without adequate housing, Mexicans occupied society's lowest rungs, their religious and cultural differences attracting prejudice, discrimination, and sometimes violence.

[born] population."²⁴¹ With promises to restore law and order, the Klan was well received in Pueblo.²⁴²

Although the Klan was ultimately unsuccessful in its plan to achieve lasting rule over Colorado, its period of domination must have amounted to a reign of terror for minorities. Eleven crosses burning simultaneously throughout Denver, five hundred men marching down the street with the Governor of the state at their head to demand that people in a clothing store be arbitrarily fired, rampant raids on citizens, and the harassment of anti-Klan leaders under the guise of a prohibition agency create a picture of an oppressive and frightening society in Colorado during those years.

More importantly, the Klan's period of power had lingering effects in Colorado:

The Klan... was instrumental in establishing... some undesirable practices, such as... recording the race and religion of teachers appointed in the tax-supported schools and of all students enrolling in the state colleges and the University of Colorado. This practice enabled employers of teachers and other professionals from state institutions to screen out the religious and racial "undesirables"... Forms of housing discrimination were also perfected during the Klan years. These included especially the "gentlemen's agreements" by which Jews and often Catholics were kept out of so-called exclusive neighborhoods, [and] "restrictive covenant[s]..." used with great effect against the Indian, Negroes, and Orientals to keep them in the least desirable sections of the cities.²⁴³

Stapleton himself was re-elected many times and held office until 1947.²⁴⁴ Neither he nor the Klan seemed to mellow over the years; the organization kept a fifty-gallon drum of hot tar ever at the ready.²⁴⁵

A 1947 report made by Mayor Newton's Interim Committee on Human Relations also mentions "[a] long record of police brutality, hangover from the Klan days."²⁴⁶ A legacy

241. *Id.*

242. *See id.*

243. ATKINS, *supra* note 47, at 90.

244. *See* LEONARD & NOEL, *supra* note 47, at 200.

245. *See id.* at 201.

246. ATKINS, *supra* note 47, at 158.

of housing discrimination and police brutality continued throughout the 1950s and 1960s, according to the reports of Denver's Commission on Human Relations. Newspaper articles describe police brutality at least through the early 1970s.²⁴⁷ A June 1998 *Denver Post* article entitled *Blacks Thought Days of Nooses Were Gone*²⁴⁸ implies the opposite: since August 1997, eight African-American workers at Denver-area companies found nooses in their work areas.

IV. THE DENVER COMMISSION: DOCUMENTING—AND ENTRENCHING—RACISM DURING THE POSTWAR YEARS

The Klan period left a lasting legacy. Many of the governmental figures who gained office during this period continued to serve, in some cases into the late 1940s.²⁴⁹ Many of the mechanisms and attitudes this period saw entrenched remained in place and became part of Colorado culture.²⁵⁰

During the Great Depression, sentiment against minorities had hardened. The Mexican-American community in particular, relatively small and non-activist to that point, had increased in numbers with the need for migrant labor and other kinds of menial work. But with the deteriorating economy, whites now filled the poorly paid positions the Mexicans had occupied, so that they were no longer needed.²⁵¹ When a few Mexicans were forced to seek welfare relief, whites were enraged.²⁵² In 1936, Governor Johnson proposed shipping all Mexican-looking people back to their country of origin.²⁵³ The *Englewood Monitor* proposed concentration camps for

247. See also GRANT ET AL., *supra* note 211, at 12, 40 (Klan atmosphere a way of life; cross-burnings until mid-century).

248. Susan Greene, *Blacks Thought Days of Nooses Were Gone*, DENV. POST, June 19, 1998, at B1.

249. See *supra* notes 237, 244 and accompanying text (Stapleton served until 1947).

250. See LEONARD & NOEL, *supra* note 47, at 198; ATKINS, *supra* note 47, at 259 (discussing the Ku Klux Klan as a social movement); see also GOLDBERG, *supra* note 1, at 187-88 (on the relationship between the Colorado Klan and the Protestant churches).

251. See DEUTSCH, *supra* note 47, at 163-65.

252. See *infra* note 267 and accompanying text.

253. See LEONARD & NOEL, *supra* note 47, at 391. This happened elsewhere throughout the country. See Gilbert Carrasco, *Latinos in the United States: Annihilation and Exhile*, in THE LATINO/A CONDITION: A CRITICAL READER 77, 79-80 (R. Delgado & J. Stefancic eds., 1998).

those who refused to go.²⁵⁴ And a Weld County sheriff declared that "a Mexican is a 'natural born liar, thief, and gambler.'"²⁵⁵

In words echoing those used by Coloradans speaking of surplus Chinese miners a few decades earlier, Mexicans were now deemed "excrescences upon [farming's] fair face."²⁵⁶ Blacks, Mexicans, and Japanese were denied service at restaurants and hotels.²⁵⁷ The number of blacks and Mexicans in the professions and at the state universities and colleges was miniscule.²⁵⁸ Even the Catholic Church in Denver enforced segregation during Mass.²⁵⁹ Cities had signs saying Mexicans were not allowed within or had to leave the city before sundown.²⁶⁰ A Mexican woman who wanted to open a beauty parlor in Longmont was told she could not do so because the city had a policy against Mexican-owned businesses.²⁶¹

When some Mexicans did not voluntarily deport themselves to Mexico, Governor Johnson, in 1936, ordered alien beet workers out of the state and blockaded the southern border to make sure no new ones entered.²⁶² Troops set up barriers and stopped trains, buses, and automobiles, inquiring into the assets and origins of anyone who looked suspicious.²⁶³

254. See LEONARD & NOEL, *supra* note 47, at 391; DEUTSCH, *supra* note 47, at 165.

255. R.W. ROSKELLEY & CATHERINE R. CLARK, WHEN DIFFERENT CULTURES MEET: AN ANALYSIS AND INTERPRETATION OF SOME PROBLEMS ARISING WHEN PEOPLE OF SPANISH AND NORTH EUROPEAN CULTURES ATTEMPT TO LIVE TOGETHER 9 (1949) (statement printed originally in the *Greeley Tribune* on May 29, 1919); see also DEUTSCH, *supra* note 47, at 151.

256. DEUTSCH, *supra* note 47, at 151; see also ATKINS, *supra* note 47, at 35 (noting that the sometimes violent confrontations between cattle ranchers and sheepherders had racial overtones, because the sheepherders were dominantly Mexican).

257. See DENVER COMM'N ON HUMAN RELATIONS, BOX 1, A REPORT ON MINORITIES IN DENVER 65, 68, 70 (1947) (on file in the Denver Public Library, Western History Collection). Denver hotels routinely refused admission even to world famous blacks like Duke Ellington, Paul Robeson, Count Basie, and the Harlem Globetrotters. See GRANT ET AL., *supra* note 211, at 46.

258. See DENVER COMM'N ON HUMAN RELATIONS, *supra* note 257, at 60-61; see also ATKINS, *supra* note 47, at 235-50.

259. See Telephone Interview with native-born Chicana Colorado resident (June 10, 1998).

260. See *id.*

261. See *id.*

262. See DEUTSCH, *supra* note 47, at 165; LEONARD & NOEL, *supra* note 47, at 391.

263. See Tanya W. Kulkosky, *Mexican Migrant Workers in Depression-Era Colorado*, in LA GENTE, *supra* note 47, at 128.

The Mexican Ambassador to the United States protested, but Johnson called out the National Guard and declared martial law.²⁶⁴ United States citizens who looked Mexican were arrested.²⁶⁵ Even conservative Hispanic groups protested.²⁶⁶ Although the Governor's blockade was lifted a few days later, other agencies of state government did not let up; Colorado relief agencies alone engineered 20,000 deportations. "[W]hole communities disappeared."²⁶⁷

A 1940 survey of Colorado public school students revealed that thirty-one percent did not think Mexicans should be allowed to become citizens; thirty-five percent would not allow one in the same room as they; forty-two percent did not think they should be allowed to join their church; forty-eight percent would not accept one as a friend; sixty-nine percent would not accompany one to a social function; and ninety-four percent would not marry one.²⁶⁸ (This latter figure is unsurprising; Colorado maintained a law against interracial marriage until 1954).²⁶⁹

Many hospitals would not admit blacks, nor would many realtors sell them homes.²⁷⁰ Most did menial work, the only kind open to them;²⁷¹ few were teachers or other professionals.²⁷² Denver blacks also had to swim in dirty water at the Curtis Street Public Bath House where the pool was drained after the day that blacks swam so that the water would be clean for whites.²⁷³ In 1932, blacks tried to integrate

264. See DEUTSCH, *supra* note 47, at 165; Kulkosky, *supra* note 263, at 128.

265. See DEUTSCH, *supra* note 47, at 165-66.

266. See *id.* at 166. A few Spanish Americans, whose families pre-dated U.S. acquisition, supported the governor's actions. See Kulkosky, *supra* note 263, at 129. The objection of conservative Latino groups is notable because established Latinos sometimes distance themselves from the less well-educated, unwashed newcomers and even support immigration enforcement.

267. DEUTSCH, *supra* note 47, at 165. Colorado and Mexico continued to enjoy poor relations. After the war, that nation expressed concern over conditions in migrant labor camps in Colorado, then put the state on a "blacklist" of states considered to discriminate against Mexican workers. See *Colorado Among States "Unfair to Mexicans"*, ROCKY MTN. NEWS, Mar. 9, 1946, at 8.

268. See DEUTSCH, *supra* note 47, at 174-75.

269. See *supra* note 66.

270. See DENVER COMM'N ON HUMAN RELATIONS, *supra* note 257, at 43-49.

271. See ATKINS, *supra* note 110, at 159-60.

272. See *id.* at 160.

273. See GRANT ET AL., *supra* note 211, at 38; DENVER COMM'N ON HUMAN RELATIONS, *supra* note 257, at 67; CHAER ROBERT, AGENCY FOR HUMAN RELATIONS AND COMMUNITY RELATIONS, CIVIL RIGHTS IN DENVER THEN AND NOW

Washington Park's swimming beach.²⁷⁴ Whites were furious, left the water, and got sticks and stones.²⁷⁵ The blacks withdrew, but two of the trucks in which they had come would not start.²⁷⁶ The blacks were beaten in front of 1000 onlookers.²⁷⁷ The *Denver Post* minimized the incident; it did not even hire its first black reporter, George Brown, until 1950.²⁷⁸ Brown wrote that even then he could not swim in the municipal pools and that some hotels refused him service.²⁷⁹ Writing in March 1998, African-American newspaperman Don Blount reported that things had not much improved in the interim, at least with regard to municipal services.²⁸⁰

To summarize, then, our review of the first 100 years of Colorado history shows that for much of this period, the Mountain West concentrated intensely on *extraction*. The early settlers came looking to strike it rich in gold, silver, or coal mining, and later in timber, oil, and land speculation and development. The early settlers set a tone—even today, Colorado has a tradition more associated with taking than giving. The area has little tradition of philanthropy, socially responsible investing, or private giving to the state universities or civic institutions.²⁸¹ Compared with other urban centers

7 (1997) ("[P]ools . . . started out with lilly-white [sic] Anglo girls and then boys, and then Hispanics, and then Black people and then the swimming pools would get the water changed.").

274. See LEONARD & NOEL, *supra* note 47, at 366.

275. See *id.*

276. See *id.*

277. See *id.*

278. See *id.* at 366, 372.

279. See *id.* at 372-73.

280. See Don Blount, *Colorado Isn't Immune to Racism*, DENV. POST, Mar. 31, 1998, at B9.

281. See, e.g., Debra Baker, *Mandating Good Works: Colorado Proposal Requiring Pro Bono Draws Fire from Most Lawyers*, A.B.A. J., Mar. 1999, at 22; Donald Blount, *Investing 'Socially' Debated: 'Responsible' Investing Grows, but Not in Denver*, DENV. POST, Dec. 20, 1998, at L1 (low rate of social investment); Sandra Dallas, *State's Philanthropists Not Always Forgiven*, DENV. POST, Jan. 10, 1999, at G2. Denver's relative lack of cultural amenities is well known—indeed it has inspired the soubriquet "cowtown," which locals sometimes wear as a badge of pride. We mention this lack, not to disparage a fine city with many remarkable qualities, such as outdoor recreation, world-class stock shows, and sports teams, but to highlight a historically based, causal relation with the earlier period of intensely self-oriented extraction—a period that also featured cool, diffident treatment of minorities. Denver residents today, of course, include many civic-minded, anti-racist, and generous people, including many of our respondents, who have struggled to make Colorado an even better place.

A recent book by Thomas J. Noel, Stephen J. Leonard, and Kevin E. Rucker,

such as Dallas, San Francisco, Boston, or New York, Denver lacks many urban and cultural amenities; it boasts no major symphony, ballet, or art museum, for example.²⁸² Its main foundations and think tanks are conservative and support free enterprise and deregulation.²⁸³ The region resents regulation

Colorado Givers: A History of Philanthropic Heroes, provides some sidelights on Colorado philanthropy, including the role of women. In many cases, the *wives* of the mining magnates and militia officers who were mistreating Indians and Mexicans were working assiduously to relieve the misery of these very groups, setting up aid stations and programs for the sick and poor. See THOMAS J. NOEL ET AL., *COLORADO GIVERS: A HISTORY OF PHILANTHROPIC HEROES* 7-22 (1998).

In general, "[p]hilanthropy got off to a slow start in Colorado, a state founded by gold rushers who came to 'git and git out.'" *Id.* at 1. Indians, of course, believed in hospitality and shared food with the needy and visitors. See *id.* at 3.

On an official level:

For decades, Colorado did not . . . act to help the less fortunate. Their care was left to private, religious, and town or county agencies until 1891, when the State Board of Charities and Corrections was established. Indigents continued to be . . . lumped with criminals until the 1933 creation of the State Division of Public Welfare.

Id. at 47. "Neither state nor local official(s) showed eagerness to deal with the poor and the infirm, who were regarded as 'pests.'" *Id.* at 50.

A chapter entitled *Notable Colorado Philanthropists* begins: "Men were drawn to the Colorado mining frontier for the opportunity to . . . strike it rich. . . . Only a few showed memorable concern for their fellow man." *Id.* at 55. Several gave to religious causes only, and at the end of their lives; another beautified his city (Colorado Springs) in hopes of attracting his eastern sweetheart, "Queenie," to settle there (she visited, but refused). See *id.* at 60-61.

Another gave away money to help orphans and geriatrics, which offended his neighbors who were concerned that "[t]he ragtag and bobtail from the ends of the earth will arrive to take up residence here." *Id.* at 66. His family thought his will, which left money to the poor, so extraordinary that they spent fourteen years trying to break it, arguing that "his extravagant generosity was proof of insanity." *Id.*

Colorado's first foundation was not established until 1922. See *id.* at 71. One large one (the Paepcke family foundation) was set up to rescue the town of Aspen, then a fading mining community. See *id.* at 96. The family had "a lofty dream. They wanted to reintegrate Germany into the world intellectual community. The horrors of World War II had overshadowed the vast Teutonic contributions to the arts, literature, music and philosophy." *Id.* at 96. Believing that Germany had an undeservedly bad reputation in the post-World War II world, the wealthy family invited Dr. Albert Schweitzer from his remote hospital in Africa to Aspen for a Goethe Centennial, which led to the founding of the Aspen Institute for Humanistic Studies. See *id.* at 97.

282. The Colorado Ballet, for example, was recently forced to dance to recorded music; the symphony went out of existence for a short period of time for lack of funds. See Editorial, *Discord Troubling Dance*, ROCKY MTN. NEWS, Oct. 25, 1997, at A6; T.R. Reid, *Denver Rock Promoter Finds Niche at Symphony Hall*, WASH. POST, Oct. 20, 1989, at A3.

283. See STEFANCIC & DELGADO, *supra* note 10, at 29-30, 79-80.

and taxes, federal or state.²⁸⁴ Its heroes are energetic loners—sports figures, astronauts, gold seekers, mountain climbers who made it to the top of Everest, or those wild, exuberant adolescents known as cowboys.²⁸⁵ From 1850 to the early twentieth century Colorado produced no writer or chronicler of any significance—no Mark Twain, James Fenimore Cooper, Rolando Hinojosa, Willa Cather, or Wallace Stegner.²⁸⁶

This extractive, self-oriented quality of early Colorado life explains many of the zigs and zags of blacks' and Mexicans' racial fortunes in the state. Put simply, when minorities like the Indians were in the way, whites pushed them aside. If they resisted, force was deployed. Chinese, Japanese, and Mexicans were treated similarly. When times were good and their labor was needed to operate the mines, build the railroads, or pick the harvests, they were tolerated. Whites would work alongside them; camaraderie would even develop. But when conditions changed and these groups competed for jobs whites wanted, the camaraderie evaporated. Minorities were treated almost as natural resources, something to be exploited in times of need, like a heap of gold ore, a vein of coal, or a stand of timber. If they could be put to good use, well and good. But when they stood in the way of expansion or development—or worse, made claims of their own, for example, for welfare or public services—the culture turned against them. It was the job of whites to *take*, of minorities to *give*. When minorities tried to reverse this role, trouble resulted.

284. On the Sagebrush Rebellion, see Patrick Buchanan, *10th Amendment Rebellion Gaining Steam Across U.S.*, FRESNO BEE, July 25, 1994, at B7. The state ranks 49th in funding for education. See Julie Poppen, *Lobbyist Hired Despite Concerns*, BOULDER DAILY CAMERA, Jan. 16, 1999, at A1.

285. See, e.g., Lisa Peñaloza, *Another Culture: A Researcher Looks at the National Western Stock Show*, BOULDER DAILY CAMERA, Jan. 31, 1999, at E6; *It's Official: Senate Likes the Broncos*, DENV. POST, Jan. 30, 1999, at A15; Woody Paige, *Drop-Dead Survival Kit for Trip to Super Bowl*, DENV. POST, Jan. 24, 1999, at C1 (celebration of local sports team and crude put-down of Miami, a highly successful, multiracial city and site of the 1999 Superbowl, including advice to wear signs saying, "I AM NOT A TOURIST. DON'T KILL ME, POR FAVOR" and warnings to beware of drug dealers, rapacious homosexuals, and hotel thieves).

286. See THOMAS J. NOEL, *MILE HIGH CITY: AN ILLUSTRATED HISTORY OF DENVER* 31 (1997). Performing arts were only of the bar-room variety. It took the Progressive Era and Mayor Speer to build any gardens, paths, and public parks. High culture came to Denver even later, and even then it was scarcely world class. See LEONARD & NOEL, *supra* note 47, at 140-49; see also *supra* note 282.

A. *Social Workers and Unity Councils: Elites and Well-Wishers Enter the Picture*

The 1920s and 1930s, which were otherwise periods of unrelieved misery for most minorities of color in Colorado, also saw a development that was later to prove significant. As the wave of European immigration that brought millions of new citizens to Ellis Island and other ports of entry subsided abruptly around 1920, the "Americanization" industry—social workers, sociologists, operators of settlement houses—suddenly was out of work.²⁸⁷ It was around this time that social workers discovered a domestic minority—Mexican Americans—that needed their attention.²⁸⁸ Poor, in many instances non-English speaking, and inadequately socialized in American patterns of housework and child-rearing, Mexican Americans became the focus of much of the energy and attention that previously had been discharged on immigrants from Europe. Books, articles, and dissertations about the "Mexican problem" proliferated.²⁸⁹ Academics in Colorado and elsewhere saw Mexican labor as a topic of sociological, historical, and political study.²⁹⁰ As the Depression heightened concern about job displacement and competition, politicians like Governor Johnson took straightforward action against Mexicans (e.g., deporting them and blockading the state border),²⁹¹ while academics and journalists stepped up their writing about the condition in which Mexicans lived and debated whether their culture was susceptible of "rehabilitation."²⁹² As one researcher put it, "[i]n their quest to

287. See CAREY MCWILLIAMS, *NORTH FROM MEXICO* 188 (Matt S. Meier ed., New ed. 1990).

288. See *id.*

289. See *id.* at 188-89.

290. See GEORGE J. SANCHEZ, *BECOMING MEXICAN AMERICAN* 95-107 (1993). For the debate over immigration restrictions in the 1920s and the place of Mexican laborers as immigrants and workers, see *Temporary Admission of Illiterate Mexican Laborers, Hearings Before the House Comm. on Immigration and Naturalization*, 69th Cong. (1926). See also *Seasonal Agricultural Laborers from Mexico, Hearings Before the House Comm. on Immigration and Naturalization*, 69th Cong. (1926); Richard Delgado, *Rodrigo's Eleventh Chronicle: Empathy and False Empathy*, 84 CAL. L. REV. 61, 70-71 (1996).

291. See *supra* notes 262-67 and accompanying text.

292. See R.W. ROSKELLEY & OLAF F. LARSON, *EDUCATIONAL FOUNDATIONS FOR RURAL REHABILITATION* (1939); see also OLAF F. LARSON, *BEET WORKERS ON RELIEF IN WELD COUNTY, COLORADO* (1937); ESTHER K. SCHILLINGER, *SOCIAL*

document the very real social and economic obstacles that [afflicted] . . . the Spanish-speaking in Colorado, these researchers and their studies worked seamlessly with popular opinion to lay rough boundaries of extreme racial stigmatization and difference around the . . . Spanish-surnamed community."²⁹³ Both public and academic opinion essentialized people of Mexican descent, treating Spanish-American families whose roots preceded the Anglos by centuries and recent, dirt-poor arrivals from Mexico engaged in migrant labor alike. "By the dawn of the United States involvement in World War II, Denverites viewed both permanent residents and migrant laborers collectively as one alien group of rural migrant and potentially subversive laborers like their counterparts in the fields of Northern Colorado."²⁹⁴ Although the intention of the early investigators was positive, they ended up drawing sharp lines; Negroes and Mexicans alike stood very far from middle-class suburban whites, their work ethic, living habits, and ambitions deeply problematic. Why else would Americanization be necessary?

During the World War II years, unity councils and civic organizations mobilized to maintain morale and celebrate the contributions of all Americans to the war effort.²⁹⁵ A letter to the *Rocky Mountain News* pointed out that: "Today on the far-flung battlefronts, Americans named Martinez, Tafoya, Valdez and Garcia are fighting for the country they love, shoulder-to-shoulder with . . . Americans named Murphy, Campbell, Jones, Brown and Smith. All Americans, they are united in this war to save democracy."²⁹⁶ Jobs were plentiful during the war. Even so, friction in the immediate postwar period over

CONTACTS OF THE IMMIGRANTS OF WELD COUNTY (1930); BRUCE POIRSON WAGGONER, *THE DISTRIBUTION OF POPULATION IN COLORADO* (1937).

293. Tom I. Romero, II, *No More Mañana for the Queen: The Commission on Human Relations, Mexican Americans and Racial Consciousness in Denver, 1947-1965*, at 11 (1998) (unpublished manuscript, on file with the authors).

294. *Id.* at 12 (citing a *Rocky Mountain News* article appearing on October 26, 1937).

295. *See id.* at 8.

296. *Id.* (citing a *Rocky Mountain News* article appearing on January 20, 1943); *see also* LEONARD & NOEL, *supra* note 47, at 368.

conditions in the sugar beet industry prompted Mexico to refuse to allow bracero laborers into the state.²⁹⁷

Shortly thereafter, the Denver Unity Council, a forerunner of later organizations, produced a massive report documenting conditions in the "Spanish-speaking" community.²⁹⁸ Based on interviews, the report documented substandard health and living conditions, tuberculosis, venereal disease, and a lack of leadership afflicting the group. Focusing on Denver, the Council wrote that Spanish-speaking people live in the oldest and most substandard homes, pay the lowest rents, and have more occupants per room than any other people.²⁹⁹ Further, it found that a child born in the Mexican community has a "limited opportunity to become an integrated part of community life,"³⁰⁰ and that the cycle of poverty in which the community is trapped is apt to be trans-generational and self-perpetuating.³⁰¹

1. Documenting Racism: Mayor Newton's Commission

In 1947, Mayor Quigg Newton, a liberal who succeeded the long-running Benjamin Stapleton, honored a campaign pledge

297. See *supra* note 262 and accompanying text; see also ERNESTO GALARZA, *MERCHANTS OF LABOR: THE MEXICAN BRACERO STORY* (1964) (providing a general history of the "bracero"—contract worker—program).

298. See DENVER UNITY COUNCIL, *THE SPANISH-SPEAKING POPULATION OF DENVER: HOUSING, EMPLOYMENT, HEALTH, RECREATION, EDUCATION* (1946). Because of bad publicity over Mexico's refusal, in 1945, to allow bracero laborers to work in Colorado's exploitive sugar beet industry, the Denver Unity Council, in cooperation with thirty-two local, state, and federal organizations, commissioned a survey and analysis by the National Opinion Research Center of the University of Denver on Denver's Spanish-speaking community. See *id.* Drawing on data already available from other, not always accurate, sources (instead of interviewing members of the community), the study succeeded in bringing to light the need to address the disadvantaged economic condition of the Mexican-American community, and failed by neglecting to understand the subtleties of difference among those who happened to bear a Hispanic name and lived in a certain geographic location. See *id.* The report, published in 1946, became the model for subsequent investigations undertaken in the years immediately following by members of the Denver Commission on Human Relations, the Council's generic successor. See *id.*

299. See *id.* at 5.

300. *Id.* at 8.

301. See *id.*

and established a task force on human relations.³⁰² Charged with investigating conditions in minority communities and impediments to cross-racial understanding in Denver,³⁰³ an Interim Committee on Human Relations drew from many existing civil organizations; its members were many of the same people who had taken part in unity organizations during World War II or the Unity Council study in 1946.³⁰⁴ It also included leaders and representatives of the local Mexican-American, black, Native-American, Jewish, and Japanese-American communities.³⁰⁵ It had a multiplier effect, serving as a model for later commissions and task forces,³⁰⁶ many of which included representatives from other community organizations, such as schools, realtor associations, the police, and churches.³⁰⁷ The dogma and reports that these groups developed thus went out to many sectors of the community. The Commission also employed the techniques of social science and leaned heavily on academic expertise, including anthropology (for example, in dividing the world into three races),³⁰⁸ sociology (in understanding the pathology of minority communities),³⁰⁹ and psychology (in depicting white racism as an aspect of irrationality and scapegoating).³¹⁰ The Commission also turned to "hundreds of pages of opinion research on the minority problem" carried out by the National Opinion Research Center at the University of Denver³¹¹ to understand how racism directed against the main minority groups compared in virulence.³¹²

302. Denver Commission on Human Relations, Box 4, Development of Denver Coordinating Council for Education and Research in Human Relations (unpublished document, on file in the Denver Public Library, Western History Collection); see also Romero, *supra* note 293, at 19.

303. See Romero, *supra* note 293, at 19.

304. See *id.*

305. See *id.*

306. See *id.* at 16.

307. See *id.* at 19-20.

308. See ROSKELLEY & CLARK, *supra* note 255, at 9.

309. See *id.* at 7.

310. See *id.* at 11-14.

311. *Id.* at 16.

312. On the committee's formation and early work, see LEONARD & NOEL, *supra* note 47, at 368. The Commission's work was aimed mainly at the urban population of Denver. Anglos in rural Colorado, of course, knew full well what minorities were good for—mining and stoop labor. See *infra* Part V.

After charging the committee with investigating "those areas where barriers have been erected between neighbor and neighbor"³¹³ and proposing courses of action,³¹⁴ the Mayor, leaving no stone unturned, also constituted a charter convention to propose laws against racial discrimination in hiring and a civilian review board to investigate complaints against the police.³¹⁵ Inflamed by the draft charter's pledge committing the city to fair employment regardless of color, creed, or religion, city voters emphatically rejected the document.³¹⁶

The committee, now renamed the Denver Commission on Human Relations, proceeded undiscouraged, however, gathering stories and oral testimony, conducting surveys, and issuing reports. It also obtained the expertise of university professors of sociology, anthropology, and psychology, including some from departments that had contributed to the earlier wave of writing about Chicanos and other "problem groups."³¹⁷ Some of the early material the Commission gathered was truly remarkable. It found, for example, that nearly fifty percent of Denver businesses hired no Latinos,³¹⁸ one business owner explained the reason for this by suggesting Latinos "have a slight mental inferiority."³¹⁹ For its part, the entire police force contained exactly one Hispanic and two blacks.³²⁰ Japanese were told they could not meet the force's height requirement.³²¹ Responding to charges that they harassed and arrested minorities of color pretextually, the force responded that they

313. Romero, *supra* note 293, at 6.

314. *See id.*; *see also* Denver Commission on Human Relations, *supra* note 302.

315. *See* LEONARD & NOEL, *supra* note 47, at 246.

316. *See id.*; *see also* NAT'L OPINION RESEARCH CTR., PUBLIC ATTITUDES TOWARDS MINORITIES (1948).

317. *See infra* Part IV.B.

To appreciate fully the position of the Mexican or Spanish American who came to Colorado, the Anglo should imagine the difficulties he would encounter if he were to go to a strange land and be expected to discard many of his ideals, attitudes, and reactions to situations which he had learned were correct, and to adopt strange ones about which he knew little and toward which he would be skeptical because of his limited understanding of them and their newness to him.

ROSSELLEY & CLARK, *supra* note 255, at 10.

318. *See* LEONARD & NOEL, *supra* note 47, at 391.

319. *Id.*

320. *See id.* at 368.

321. *See id.*

did not feel it proper to treat minorities with excessive solicitude.³²² Archival material contains four cases illustrative of those brought to the Commission in its early months. In one, a Latino boy went to the back door of a well known local restaurant to inquire about a job. Police seized him, demanded to know what he was doing, and knocked out his two front teeth.³²³ In another case, a Latino man was sitting in a restaurant awaiting service. Police arrived, attacked, and beat him with blackjacks.³²⁴ Several other Mexicans who tried to protest were taken to jail.³²⁵ In a third, two Mexican nationals, just released from a local hospital, were waiting for a cab. Police picked them up and held them incommunicado for seventy-two hours.³²⁶ Finally, a Latino man charged with resisting arrest was dragged into a patrol wagon. When it arrived at the Denver County Jail, the man was dead; an autopsy showed cuts, bruises, brain hemorrhage, and congestion of the lungs.³²⁷

After examining the situation of minorities vis-à-vis housing, the same report that documented the previous four examples declared, a little breathlessly: "The word 'ghetto' has a frightful sound to American ears. Nevertheless, Denver, a democratic city . . . has ghettos in fact, if not in name. . . . Here, as elsewhere, minorities are trapped in the poorest housing areas. . . . Children are born into these surroundings."³²⁸ The report noted a linked spiral: job discrimination means that minorities earn less; their lower income drives them to poor housing areas; prejudice keeps them there; the neighborhoods become full to overflowing; facilities break down; and the inhabitants try to escape but run "into a wall of prejudice."³²⁹ The report concluded: "Prejudice is an expensive luxury. The cost in dollars and cents is staggering. The cost in human misery is enormous."³³⁰

322. *See id.*

323. *See* DENVER COMM'N ON HUMAN RELATIONS, *supra* note 257, at 24.

324. *See id.*

325. *See id.*

326. *See id.*

327. *See id.*

328. *Id.* at 44.

329. *Id.* at 86.

330. *Id.* at 85.

2. Documenting Discrimination in Particular Areas

The Commission and successor or companion task forces worked diligently and on a nearly blank slate, for little previous work documenting racism in Denver or Colorado had been done. Some of the areas into which they inquired were access to health and medical services, housing, jobs, and police. We address each in turn.

a. Access to Health and Medical Services

The Commission found that minorities, especially blacks, were often denied access to health and medical services. Many hospitals refused to admit blacks. For instance, one admitting nurse remarked to a Denver physician who had rushed a Negro child, seriously ill with pneumonia, to a local hospital, “[b]ut you didn’t tell me the child was colored. We cannot admit her.”³³¹ In another case a prominent Negro businessman was stricken with a critical illness. His regular physician, a black, was unable to place him in a certain hospital, even though his condition was critical. A white physician then agreed to come along; the clerk again said the hospital had no room. The Negro doctor, who had called ahead, insisted that his patient was already admitted. The authorities grumbled, but went ahead and admitted the patient.³³² Several hospitals admitted blacks, but separated them from whites, even though this practice was wasteful and resulted in half-full rooms,³³³ or rushed them out of hospitals before fully recovered.³³⁴ Only two African-American physicians were employed in local hospitals; both had nominal status only and were never called to see patients.³³⁵ No hospital had a black nurse in training. The only jobs available for minorities at hospitals were menial.³³⁶ In addition, practically all the sanatoria and

331. *Id.* at 74 (emphasis omitted).

332. *See id.* at 75.

333. *See id.*

334. *See id.* at 76.

335. *See id.*

336. *See id.* at 76-77. Even today, the Health Sciences Center of the University of Colorado at Denver has a poor reputation in the minority community. *See* Interviews with Community Associates, Latino/a Research & Policy Center, University of Colorado at Denver (Apr. 22, 1998). Interviews recounted discrimination against African-American and Latino/a students and

convalescent homes excluded Spanish Americans, Japanese, and Negroes. "The Community Chest sanatoria, . . . admit[ted] many persons not eligible for City care, den[ied] admission to Negroes and [were] selective in admitting Spanish and Japanese."³³⁷ More recently, a Hispanic university professor told us that when he and his wife were students in Greeley in the 1960s, they took their sick daughter to the hospital, where they received rude, patronizing treatment, including being asked if they understood enough English to follow medical directions.

b. Housing

In housing, the Commission found that minorities were highly residentially confined.³³⁸ When one minority tested the

trainees. Some said they were graded down because of failure to make eye contact with patients or supervising physicians, or told their command of English was inadequate, when they had been high-achieving high school and college students. Others said they were graded down if they did not join study groups ("cliques").

337. See DENVER COMM'N ON HUMAN RELATIONS, *supra* note 257, at 76.

338. See LEONARD & NOEL, *supra* note 47, at 374; see also TAYLOR, *supra* note 47, at 266 (stating that in 1950, 89% of Denver's black population lived in the Five Points area in houses built in the 1800s). Not only did the Commission believe minorities lived in barrios and ghettos, it sponsored bus tours to make sure middle-class Denverites could see how Mexican Americans and blacks lived. See Denver Commission on Community Relations, Denver Coordinating Council, Housing Tour 1960-61, Bus Route (unpublished document, on file in the Denver Public Library, Western History Collection). It lists the following colorful destinations:

Bus Route
Commission on Community Relations
Housing Tour
1960-61

1. Tour begins at office of Commission on Community Relations, West Side Court Building, West Colfax and Kalamath Street.
2. Lincoln Park low-rent Public Housing Project; Denver Housing Authority; first publicly assisted housing in Denver (1940); 422 families.
3. Proposed Jerome Park Industrial Redevelopment Project, Denver Urban Renewal Authority; now in planning stages; removal of slum dwellings and relocation of families for industrial development.
4. Proposed West Colfax Industrial Redevelopment Project; Denver Urban Renewal Authority; proposed removal of "under the viaduct slums" and relocation of families for industrial development.
5. Avondale Urban Renewal Project, Denver Urban Renewal Authority; project now in execution stages. Clearance of 40 acres

waters in a white neighborhood, he was warned: "You do so at your peril."³³⁹ Each of twenty-four real estate firms and homeowners associations surveyed by the Commission admitted that they kept minorities out of "white" areas; indeed, interpreted their professional code of ethics to require them to do so.³⁴⁰ Neighborhood animus against minority families attempting to move to white neighborhoods would sometimes "rise to criminal pitch";³⁴¹ minorities also found it "next to

for new private housing, shopping center and motel; rehabilitation of existing private housing; construction of new park and school facilities.

6. West Ridge low-rent Public Housing Project, Denver Housing Authority; erected in 1952; 200 families.
7. Proposed Valley Highway and Lawrence-Larimer Streets connector route through lower downtown area to connect with 38th Street and 40th Avenue in Blake Street Urban Renewal project area.
8. Lower downtown area. Major unsolved problems of skid row, slum dwelling, flop houses. An area "ripe" for private and public urban renewal.
9. Slum housing contrasted with low-rent public housing.
10. Curtis Park low-rent Public Housing, Denver Housing Authority; consists of three units, Arapahoe Courts, 76 families, opened September, 1942; Platte Valley Courts, 77 families, opened September, '42; Curtis Park, 45 families, opened January, 1954.
11. Whittier School Urban Renewal Project; Denver Urban Renewal Authority. A minimum of slum clearance. Majority of houses to remain and owners will be encouraged to rehabilitate their houses.
12. Housing Code enforcement program; Department of Health and Hospitals. Block by block code enforcement with assistance of neighborhood improvement association to conserve the area and stop it from becoming slum and blighted.
13. Clayton College Area. An area that experienced a rapid transition from a white to negro neighborhood approximately five years ago.
14. North Park Hill area. A neighborhood that is attempting to meet and solve its problems in human relations.
15. North City Park area. Newly constructed and older houses occupied by professional people of the negro community.

Id.

339. LEONARD & NOEL, *supra* note 47, at 193.

340. See DENVER COMM'N ON HUMAN RELATIONS, *supra* note 257, at 43, 45-

46. The National Association of Real Estate Boards' Code of Ethics stated that a "Realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values." NAT'L ASSOC. OF REAL ESTATE BDS., CODE OF ETHICS, *reprinted in* DENVER COMM'N ON HUMAN RELATIONS, *supra* note 257, at 43.

341. DENVER COMM'N ON HUMAN RELATIONS, *supra* note 257, at 47.

impossible to get loans.”³⁴² Realtors told the Commission that when minorities move in, property prices drop because minorities are dirty, destructive, have a lower standard of living, and do not take care of the properties.³⁴³ As one explained, “[c]olored folks would rather live with their own people, anyway.”³⁴⁴ A black family bought into a white neighborhood, but left when a bomb under the house partly demolished it.³⁴⁵ Three Jewish families bought homes in the Crestmoor section of Denver; two were driven out by social ostracism.³⁴⁶

Restrictive covenants were widespread, especially in areas blocking the path of expansion of the black population from the Five Points area.³⁴⁷ When Denver’s Urban Renewal program set out to find replacement housing for minorities displaced by new construction, they were unable to find enough because so few subdivisions would take them.³⁴⁸ During the 1950s, the real estate industry, realizing it could not rely on covenants any longer,³⁴⁹ developed the “Gentleman’s Agreement” and euphemistic ads boasting, “These Homes are Lifetime Homes.”³⁵⁰ A Human Rights Commission researcher, writing in 1982 on behalf of a successor task force, found that at the time of *Keyes*, a landmark school desegregation case,³⁵¹ seventy-seven percent of Denver residents opposed forced busing; many moved to the suburbs to avoid having their children go to school with schoolchildren of other races.³⁵² The “Poundstone” Amendment to the Colorado Constitution even

342. *Id.*

343. *See id.* at 49.

344. *Id.*

345. *See id.* at 47

346. *See id.*

347. *See Crow, supra* note 53, at 14.

348. *See* Denver Commission on Human Relations, Box 4, Negroes and Housing in Denver, Implications of the Whittier Urban Renewal Project 1-2 (June 30, 1961) (unpublished document, on file in the Denver Public Library, Western History Collection).

349. *See Crow, supra* note 53, at 16. Colorado courts routinely upheld these covenants until the U.S. Supreme Court invalidated them in *Shelley v. Kraemer*, 334 U.S. 1 (1948).

350. *See Crow, supra* note 53, at 16-17.

351. *See Keyes v. School Dist. No. 1*, 413 U.S. 189 (1973).

352. *See Crow, supra* note 53, at 68-69; *see also* GRANT ET AL., *supra* note 211, at 41 (stating that a clerk to federal Judge Zita Weinshienk reports same).

prohibited property annexation, so that the suburbs were safe for white-flight families.³⁵³

A recent oral history of Denver blacks contains heart-rending accounts corroborating the Commission's findings.³⁵⁴ In one incredible story, a young black man went to the only mortgage company that would lend to blacks, only to hear that it would issue him a loan for only three years at a time. At the end of each term, the entire amount would be due; the company might renew the loan if it chose, but only in exchange for another loan fee. The young man took out a loan, then paid his installments three at a time, while learning building construction skills by asking questions of workers building a post office down the street from where he lived. He eventually became a successful property owner, with up to seven buildings under his ownership.³⁵⁵

Testers found discrimination and selective responses to minority mortgage applications, such as (to a white tester), "[w]e can count the wife's income for [loan] qualifying; just bring a note from [her work]."³⁵⁶ White women also were evicted from apartments for having black friends.³⁵⁷ Earlier, a newspaper reporter found that "[a] sampling of Denver public opinion suggests that a majority don't want Spanish-Americans as neighbors under any circumstances. Only 30 percent said they should live anywhere in the city, 61 percent said they should not."³⁵⁸

353. See COLO. CONST. art. XIV, § 3; COLO. CONST. art. XX, § 1.

354. See GRANT ET AL., *supra* note 211, at 1 (stating that a black Denver resident had to have a white friend negotiate a house purchase for him, obtain a loan, and go through a mock foreclosure in order to buy the house he wanted); *id.* at 7 (recording memory of black Denver residents that they confronted restrictive covenants); see also *id.* at 15 (recording account of minority Denver reporter who was barred from 25 trailer parks and similar traveler's accommodations: "[W]e don't have restrictions on pets, but we have to draw the line on Negroes. You know what I mean . . . ?"); *id.* at 17, 88 (relating encounters of minority Denver homeowners with classical redlining—refusal to loan).

355. See *id.* at 26.

356. *Id.* at 81. Blacks and whites were treated differently in this regard. See Denver Commission on Human Relations, Box 2, Fourth Annual Workshop in Denver Cultural Relations, Notes (Feb. 25, 1958) (unpublished document, on file in the Denver Public Library, Western History Collection). "Testers" is a term referring to the use of two individuals, as much alike as possible except for race, to detect the level of racism in encounters with industries or institutions.

357. See GRANT ET AL., *supra* note 211, at 120.

358. Robert L. Perkin, *No Running Water, No Heat, It's Home to Denver's Poorest of the Poor*, ROCKY MTN. NEWS, Feb. 3, 1954, at 35. This is the fourth

A member of the Human Rights Commission's Executive Committee said: "Several years ago I was selling my home. A Japanese man wanted to buy, and I wanted to sell to him. But my agent said he would be kicked out of his own organization if he sold to a Japanese . . . regardless of my desires."³⁵⁹

The Housing Committee of the Denver Commission contains a wrenching description of "Mrs. Mills' Housing Hunting Experience."³⁶⁰ The Minutes of their May 5, 1958 meeting describe how Mrs. Mills ("Gladys") made over 100 vain attempts to buy a house, seventy-two of which she recorded. She explained that

because of strong religious convictions and a deep faith that in a democracy there must be a way to find equal opportunity in housing . . . [her family] felt an obligation to make extended efforts because they believe that unless people have integrated housing there will never be any way for the prejudices and stereotypes to be destroyed. Their desire was to buy in an area of new homes occupied by young families . . . Their preference was for southwest Denver, where they have many friends.³⁶¹

The account goes on to document visits to show houses in developments in Westminster, Colorado, only to be told "all the houses were sold."³⁶² Gladys made an appointment with "a

article, in a series of seven, stimulated by the work of the Denver Commission on Human Relations. Other articles by the same author in this series include: *Study of Critical Denver Problem*, ROCKY MTN. NEWS, Jan. 31, 1954, at 11; *Poorest of Denver's Poor*, ROCKY MTN. NEWS, Feb. 1, 1954, at 28; *Can We Blame the Poor After Half-Century of This?: Underpaid, Ill Fed, Badly Housed*, ROCKY MTN. NEWS, Feb. 2, 1954, at 27; *Health Conditions in City Show Wide Variance, High Infant Death Rate Plagues Denver's Poor*, ROCKY MTN. NEWS, Feb. 4, 1954, at 42; *Schools Can Help if They Are Used, Denver's Problem Starts when the Kids Drop out of Class*, ROCKY MTN. NEWS, Feb. 5, 1954, at 22 [hereinafter Perkin, *Schools Can Help*]; *What Are the Solutions to This Denver Problem?*, ROCKY MTN. NEWS, Feb. 6, 1954, at 5.

359. Denver Commission on Human Relations, Box 5, Coordinating Council for Education and Research in Human Relations, Minutes of Executive Board Meeting 10 (May 2, 1957) (unpublished document, on file in the Denver Public Library, Western History Collection).

360. Denver Commission on Human Relations, Box 4, Mrs. Mills' Housing Hunting Experience, Minutes of Housing Committee Meeting (May 5, 1958) (unpublished document, on file in the Denver Public Library, Western History Collection).

361. *Id.* at 2.

362. *Id.*

real estate saleslady of a large company to see five homes.”³⁶³ On learning that Mrs. Mills was black she was “not in” at the appointed time. She and her family made an appointment to see a private house “in which they were interested. They made an appointment with the wife. When they arrived [they were shown the house] with a very cool manner.”³⁶⁴ They decided to make an offer to buy it, but when they called for a second appointment “they were told that the house wasn’t for sale to them and not to come back.”³⁶⁵ Mrs. Mills eventually gave up and bought a home in the “‘accepted’ area.”³⁶⁶ Even then, bankers gave her the runaround.³⁶⁷ The minutes conclude:

Mrs. Mills put stress upon the importance of real estate persons and home owners being made to feel really responsible for their own actions without hiding behind excuses or blaming others. With the present world situation and the colored majority of the people in the world watching to see what the United States is going to do about practicing democracy at home, no one should be permitted to feel that he hasn’t a personal responsibility for his own behavior in this regard.³⁶⁸

Even into the 1980s, Denver newspapers printed real estate ads containing euphemistic phrases indicating racial steering.³⁶⁹ Redlining was common, with many banks discriminating against black borrowers, especially in the amount of down payment required.³⁷⁰ A researcher, writing in

363. *Id.*

364. *Id.*

365. *Id.*

366. *Id.*

367. *See id.* at 2.

368. *Id.* at 3.

369. *See GRANT ET AL.*, *supra* note 211, at 73; *supra* note 350 and accompanying text.

370. *See GRANT ET AL.*, *supra* note 211, at 82. “Redlining” is a real estate practice of denying loans in certain areas. In 1993, two Boulder banks denied a mortgage loan to a new Hispanic professor who had been recruited from another institution. The professor, whose annual income was over \$100,000 and had no ordinary debts and an unblemished credit history, was told he could not qualify because he paid alimony payments, totaling about one-third of his income, to his former wife. The professor pointed out that, even allowing for his alimony payments, his remaining income was large enough to support a substantial mortgage, and asked the banks if they would apply the same one-third rule to

1982, found that restrictive covenants in Jefferson County dating from the old days account for the very small number of blacks living there today.³⁷¹ Colorado courts routinely upheld these covenants.³⁷² The percentage of home ownership by blacks and Hispanics actually decreased in the period from 1970 to 1980 just preceding the researcher's 1982 report.³⁷³ Redlining in mortgage lending and issuance of home insurance still existed recently, especially for African Americans and for Hispanics.³⁷⁴ Testers, one black or Latino and one white, reported radically different experiences when answering ads for apartments or houses and applying for loans.³⁷⁵ Realtors steered them to areas deemed suitable to their race.³⁷⁶ The town of Longmont, which earlier had signs saying "No Mexicans after night," rejected subsidized housing rather than integrating in 1978.³⁷⁷ Researchers further found discrimination against Native Americans in Grand Junction as late as 1985, with Denver newspapers reporting instances as recently as early 1999.³⁷⁸

c. *Jobs*

The Commission also found a high degree of job discrimination. Even unions discriminated on the basis of race; of twenty AFL locals, sixteen had no Japanese members, nine had no Negroes, two had no Mexicans.³⁷⁹ "The 21st is an

Donald Trump. The banks said yes, but the professor later learned that this rule is not applied uniformly.

371. See Crow, *supra* note 53, at 14, 89.

372. See *id.* at 14-15; see also Steward v. Cronan, 98 P.2d 999 (Colo. 1940); Chandler v. Ziegler, 291 P. 822 (Colo. 1930); *supra* note 349.

373. See Crow, *supra* note 53, at 111.

374. See Interview with Eleanor Crow, retired civil rights researcher (July 17, 1998); see also FRANKLIN J. JAMES ET AL., CTR. FOR PUB.-PRIVATE SECTOR COOPERATION, DISCRIMINATION, SEGREGATION AND MINORITY HOUSING CONDITIONS IN SUNBELT CITIES: A STUDY OF DENVER, HOUSTON & PHOENIX ch. 4, at 92, 96 (1983).

375. See *id.* ch. 5, at 1-2.

376. See *id.* ch. 5, at 1-32.

377. See Interview with Eleanor Crow, *supra* note 374.

378. See BETTY MCCUMMINGS, TESTING FOR HOUSING DISCRIMINATION AGAINST BLACK, HISPANICS AND NATIVE AMERICANS IN GRAND JUNCTION AND GREELEY, COLORADO 62 (1985); Mike McPhee, *Shop Owner Wins Lawsuit: Merchant Alleged Discrimination*, DENV. POST, Feb. 3, 1999, at B1.

379. See DENVER COMM'N ON HUMAN RELATIONS, *supra* note 257, at 39.

all Negro Union—Dining Car Waiters' Local 475."³⁸⁰ Many employers screened out minority applicants by means of discriminatory questions on job forms (such as a question asking about race); by requiring a photograph; by tacit agreements with employment agencies; and by placing discriminatory want ads (e.g., "white" or "White Protestant").³⁸¹ A Denver employment agency reported that "Spanish and Negro applicants are hired only for domestic work."³⁸² Blacks were not accepted for training as nurses, technicians, graduate nurses, or nurses' aides at Denver General Hospital.³⁸³ Of 189 businesses surveyed, half did not employ any Hispanics, and more than half no Japanese.³⁸⁴ Mexican-American girls and women often changed their last names in hopes of "getting by" prejudiced employers.³⁸⁵ "Negroes and Japanese d[id] not even have this humiliating hope."³⁸⁶

An oral history of blacks recounts the story of a black musician who started out as a concert violinist, then found he had to change to jazz to make a living. The director of the Denver Symphony told him he would like to have him in the orchestra but, given social attitudes, it would not be possible. He rose in the world of jazz and became friends with Duke Ellington, Nat King Cole, and Count Basie.³⁸⁷

Are conditions greatly improved in present-day Colorado? Consider that

[l]ast spring [1997] a two-year independent study commissioned by the Legislature found the state chronically left out minority- and female-owned companies from more than \$2 billion in state highway, construction and other contracts.

The study was designed to provide a scientific basis for law that allows Colorado to promote the hiring of women-

380. *Id.*

381. *See id.* at 37.

382. *Id.* at 32.

383. *See id.* at 27.

384. *See* Wayne Hicks, *City's Segregated Days Are Long Past: But Minorities Still Facing Hurdles*, DENV. BUS. J., Sept. 11-17, 1998, at B4.

385. *See* DENVER COMM'N ON HUMAN RELATIONS, *supra* note 257, at 37.

386. *Id.*

387. *See* GRANT ET AL., *supra* note 211, at 46.

and minority-owned businesses to make up for past discrimination.³⁸⁸

The Denver School District in particular had awarded zero contracts to minority- or women-owned contractors until last year, 1998.³⁸⁹

d. Police

The Commission further inquired into whether minorities committed a disproportionate share of the crimes and what their relationship to law enforcement was. Some of the findings were eye-opening, and recent information indicates that not much has changed. Judges and police officials told the Commission that minorities committed crimes all out of

388. Patricia Callahan, *Social Issues Seen as Critical in Governor Race: More Conservative Legislature Likely*, DENV. POST, Oct. 30, 1998, at 16A.

389. See Carlos Illescas, *Affirmative Action Quandary, New Approaches Sought Amid Suits*, DENV. POST, Aug. 31, 1998, at 4B. And until fairly recently Colorado state government had a record of minority hiring that in many respects was worse than that of private industry. See, e.g., STATE OF COLO., FAIR EMPLOYMENT COMPLIANCE SURVEY (1960) (reporting results of a canvassing of 90 departments and institution heads, and interviews of 33 minority group employees at 14 departments or institutions). The report found:

39 departments had no minorities

19 that considered themselves "integrated" had no Negroes

11 that considered themselves "integrated" had no "people of Spanish ancestry"

Id. at 5.

Of 9,322 persons in government civil service positions, 733 were minorities.

Id. at 7.

Most of the latter were found in the lower pay groups — janitor, stock clerk, watchman, nursing attendant.

Id. at 8.

Some questions the Commission raised as a result of this study:

- 1) Why do 49.5% of the departments have no employees who are members of a minority group?
- 2) In the 51.5% that are integrated, why do they range from one department employing one member of a minority group in Grade 30 to several departments which employ 228 minorities in Grade 3?
- 3) Why are no minority group employees in grades 31 through 39, and only 40 out of a total 1203 employees in grades 16 through 30?

Id.

Denver's record was not much better. See ROBERT, *supra* note 273, at 9 ("[B]efore Quigg Newton . . . it was impossible for somebody with a Spanish surname to get a job with the City.").

proportion to their numbers.³⁹⁰ One judge estimated that fifty percent of the children in Juvenile Court were Spanish American, although court records did not indicate the races of offenders.³⁹¹ But when one reporter went back a few years, to a period when racial records *were* kept, he found that of 800 arrests, Jewish boys made up twenty percent, Irish boys came in second, and not one Mexican or Spanish American made the list.³⁹² When the police did arrest Latinos, the officers appeared to be "callous" toward them, arresting them without provocation.³⁹³ In 1921, even before the wave of Klan and anti-Mexican hysteria reached a summit, Denver sheriffs independently began seizing and busing undocumented workers back to the Mexican border.³⁹⁴

After a crime was committed, police "sometimes jailed all blacks in the vicinity."³⁹⁵ As discussed, Mayor Stapleton had named Klansman William Candlish as Chief of Police. He directed his force as "a goon squad intimidating foes of the Klan."³⁹⁶ By the 1950s, the force was so corrupt that property owners hesitated to call the police when their homes were burglarized.³⁹⁷ The police had a practice of helping themselves to valuables. When a report of a burglary came in, police would rush to get to the house first.³⁹⁸ When they caught burglars, police would confiscate burglary tools and use them themselves.³⁹⁹ Illustrative of police corruption was their treatment of Catholic priest José Lara, whose espousal of social justice annoyed them. In 1976, the police concocted a

390. See Perkin, *Poorest of Denver's Poor*, *supra* note 358.

391. See *id.*

392. See *id.* The judge told the reporter he had not seen more than five Jewish boys in the last 13 years.

393. See ATKINS, *supra* note 47, at 216 (citing DENVER AREA WELFARE COUNCIL, *THE SPANISH-AMERICAN POPULATION OF DENVER: AN EXPLORATORY SURVEY* app. XI (1950)); see also Bob Jain, *The Spanish-American in Denver*, DENV. POST, July 20, 1965, at 31 (reporting that a middle class youth caught stealing hubcaps is released to his or her parents, whereas a Spanish-American boy "who does the same thing goes straight to Juvenile Court").

394. See M. Yeung & Evelyn Hu DeHart, *Mexican Americans* 6 (unpublished manuscript, on file with the authors).

395. LEONARD & NOEL, *supra* note 47, at 192-93.

396. GOODSTEIN, *supra* note 1, at 205.

397. See *id.*

398. See *id.* at 208.

399. See *id.*

bomb story and searched every inch of his church, finding only old piñatas.⁴⁰⁰

As explanation for their discriminatory actions, police told the Commission: "We don't want to give [minorities] the idea that we are babying or coddling them."⁴⁰¹ Of course, there appeared little risk of this: minority group members felt that they had two strikes against them when they came into contact with the law.⁴⁰² A human relations expert told the Commission that police brutality causes Mexicans and other minorities to regard the police as oppressors.⁴⁰³ Asked by the Commission about any "problems peculiar to Spanish-speaking people in their relations with the police department," the Office of the Chief of Police submitted the following list:

ADULTS.

1. Sheltering member of family wanted by Police.
2. Sheltering others,
 - a. Runaways from own homes.
 - b. Friends wanted by Police.
3. Hiding evidence and stolen property.
 - a. Allow others to hide stolen property in own home.
4. Establishing false alibis for friends or members of family.
5. Reluctance to give information to Police, even though they may be victim.
6. Primary source of distribution of narcotics in area.
7. Often seem to deliberately antagonize Police in order to make claims of brutality.

CHILDREN.

1. Disrespect for authority, rather than fear.
 - a. Loitering around school grounds and annoying children who are attending school.
 - b. Whistling to warn others when Police are in vicinity.
 - c. Ignoring terms of Probation.
2. Tendency to run in gangs.
 - a. Assault other children—Extortion from others. May be Spanish.

400. See *id.* at 216-17.

401. DENVER COMM'N ON HUMAN RELATIONS, *supra* note 257, at 23; see also *supra* note 322 and accompanying text.

402. See DENVER COMM'N ON HUMAN RELATIONS, *supra* note 257, at 23.

403. See *id.* at 24 ("Denver is far behind many other cities in this field.")

- b. Assault adults. Drunks, elderly people, etc.
- [c]. Excessive drinking.
- 3. Seem to be accepting advice from outside sources, possibly subversive.⁴⁰⁴

By contrast, a Law Enforcement Section Report submitted to the Commission pointed out that many Mexican people achieved success despite growing up on the wrong side of the tracks. Why, then, the disproportionate amount of crime supposedly generated by this group? Some of the crime might be caused by resentment for having to live in unattractive parts of the city, the report found, or the need "to bolster their own ego" and to "prove themselves."⁴⁰⁵ Other minorities are career welfare recipients, the report went on to observe, yet welfare does not provide enough money, so they steal.⁴⁰⁶ Finally, "they lack the proper training in good citizenship, because they do not attend school and the family is indifferent to this problem."⁴⁰⁷ The report advocated teaching youth "their responsibilities" and emphasizing "the place laws and law enforcement have in our lives."⁴⁰⁸ Policymakers and law enforcement officers imbued with attitudes like these were scarcely apt to establish positive relationships with the communities they served.

Have Colorado's law enforcement officers become fairer in their treatment of minorities of color? There is room for doubt. One Colorado Springs Latina told us that all her darker-complexioned friends and relatives are routinely pulled over by

404. City & County of Denver, Dep't of Police, Problems Peculiar to Spanish Speaking People in Their Relations with Police Department 1 (1958) (unpublished document, on file in the Denver Public Library, Western History Collection); see also Denver Commission on Human Relations, Joint City-School Report, Summary of Department Reports (Apr. 2, 1956) (unpublished document, on file in the Denver Public Library, Western History Collection) (reporting that the police department submits "Characteristics" and "Attitudes" of Spanish-American group, including a willingness to conceal persons wanted for crimes. Moreover, "[j]uveniles exhibit disrespect, rather than fear, for police"; and members of the group "[s]eem often to deliberately antagonize police to make claims of brutality and seem to be accepting advice from outside, possibly subversive sources").

405. Denver Commission on Human Relations, Box 2, Reports and Recommendations of Discussion Groups, Law Enforcement Section 1 (1958) (unpublished document, on file in the Denver Public Library, Western History Collection).

406. See *id.*

407. *Id.* at 2.

408. *Id.*

police.⁴⁰⁹ A Latino attorney who lives in Denver reported the same experience.⁴¹⁰ A 1997 report by a Latino research center found that a high proportion of prison inmates are either Latino or African American and that their percentages there far exceed those in the population at large.⁴¹¹ It hypothesized that discrimination and poverty cause the disparity. Judges set bail too high for defendants of color to pay; sentences are longer for them than for whites who commit the same offenses; and limited English-speaking ability impairs the ability of Mexicans to negotiate pleas with prosecutors.⁴¹² Police misconduct constituted an additional cause. Hearings in 1991 revealed physical abuse, sexual assault, shootings, intimidation, and threats of retaliation by police against Latinos and African Americans.⁴¹³ Finally, the report found that only 6.7 percent of judges in Colorado were Latino (about one-half their rate in the general population); 3.9 percent were black.⁴¹⁴ These low percentages compounded the predicament of the defendant of color. Recently, federal agents teamed with local police and sheriff's deputies in Denver and six other southwest cities to raid minority neighborhoods and workplaces.⁴¹⁵ In one of the towns, critics charged that the city wanted to drive Latinos out to redevelop the part of town in which they live.⁴¹⁶ As recently as May 1998, a federal judge was pondering ways to locate missing plaintiffs whose ACLU attorneys had won an \$850,000 judgment in a federal lawsuit because Eagle County, Colorado, officers had been routinely stopping cars that fit a certain profile—Latino or black drivers with out-of-state license plates—the police thought linked with

409. See Interview with a Latina student, University of Colorado School of Law, Boulder, Colorado (Nov. 6, 1998).

410. See Interview with a Latino lawyer, Boulder, Colorado (Nov. 6, 1998); see also George Lane & Tim McGovern, *300 March to Protest Shootings of 2*, DENV. POST, Aug. 2, 1977, at 3; *Police Harassment Protested as Chicanos March in Boulder*, DENV. POST, Oct. 20, 1974, at 63; George Lane, *'Ya Basta'—An Echo of Reaction in Chicano Community*, DENV. POST, Aug. 7, 1977, at 3.

411. See Georgia Pappas, *Racial and Ethnic Injustice in the Criminal Justice System*, LARASA [LATIN AMERICAN RESEARCH AND SERVICE AGENCY] REPORTS, Feb. 1997.

412. See *id.* at 1, 2, 4.

413. See *id.* at 4.

414. See *id.* at 3.

415. See Louis Sahagun, *Agents Discriminated in Sweep, Suit Claims*, DENV. POST, Sept. 3, 1997, at 4A.

416. See *id.*

drug dealing.⁴¹⁷ This broad dragnet, of course, caught and inconvenienced many innocent drivers merely because of their race.

B. The Denver Commission and the Role of Elites: Official Knowledge-Creation and Ethnic Minority Groups

Before turning to discrimination in industries and sectors not documented by the Denver Commission on Human Relations, it seems worth pausing to consider how that Commission and the sub-groups it spawned mobilized elite groups and academic experts in putting their imprimatur on what came to be the official view concerning minority groups, particularly Latinos. Before the Commission came into existence, Colorado residents of Mexican or Spanish extraction were a nearly invisible, hard-working, largely immigrant group merely trying to make a living under difficult circumstances. After the Commission issued its reports, their situation in many respects became much worse. Now an official "problem group," they had to contend with that image and all it meant.

As if being a certified problem group were not bad enough, the Commission and later organizations enlisted the aid of professional social scientists from universities and state government to investigate and spell out specifically what was wrong with Hispanics. Most of the Commission's reports, while documenting widespread, sometimes raw discrimination against Hispanics, also laid much of the blame for their impoverished condition at the doorstep of the group itself. Reports declared that Mexicanos have a poor (non-American) diet because of cultural traits that they are loath to give up.⁴¹⁸ Moreover, they were said to lack the achievement orientation of other immigrant groups, such as Germans, Irish, and

417. See Mike McPhee, *If Plaintiffs Gone, Where Goes Award?*, DENV. POST, May 15, 1998, at B4; see also Patricia Callahan, *Panel's Criticism of School Incident Spurs Police to Ban Use of Racial Epithets*, DENV. POST, June 19, 1998, at B5. In an earlier era (the early 1970s) police shootings triggered community activism. See Ernesto Vigil, *Rodolfo Gonzalez and the Advent of the Crusade for Justice*, in LA GENTE, *supra* note 47, at 157-58; *infra* note 462 and accompanying text (Corky Gonzalez and the Crusade for Justice).

418. See R.W. ROSKELLEY & M. PIJOAN, NUTRITION AND CERTAIN RELATED FACTORS: SPANISH-AMERICANS IN NORTHERN COLORADO (1943) (Roskelley became a key expert for the Commission; this booklet foreshadows much of what he would write later); see also ROSKELLEY & CLARK, *supra* note 255.

Scandinavians.⁴¹⁹ Because their "isolation has been associated with . . . non-aggressiveness . . . they satisfy their existence by other cultural traits."⁴²⁰ A *patrone* system supposedly led Chicanos to depend on others for their needs; that and reliance on the church meant that the group failed to develop leaders, as blacks had done.⁴²¹ The resulting dependence on religion and family substituted for a "proper hygienic way of life" according to the social scientists.⁴²²

Religion and poverty combined to produce a second cultural trait—fatalism—that was said to contrast with the cultural aggressiveness of Anglos.⁴²³ If a child fell ill, it was God's will; medical help might or might not be sought.⁴²⁴ The civil rights intelligentsia also labeled Chicanos as endowed with a hazy time sense and a "mañana" attitude, in which today's vital tasks could be put off until tomorrow, and tomorrow's until the next day.⁴²⁵ They described Chicanos as lacking appreciation for formal education, accepting male desertion of the family, having a proclivity to carry knives and join gangs, and disrespecting the police and other authority figures.⁴²⁶

Paradoxically, while charting virulent discrimination against Colorado's minorities, elite educators and well-intentioned social scientists thus perpetuated stereotypes and beliefs about minorities that radically disserved them later,⁴²⁷ for example, in their relations with the educational establishment and the police. Once these attitudes were in

419. See ROSKELLEY & PIJOAN, *supra* note 418, at 4.

420. *Id.*

421. See *id.* at 4-5. "*Patrone*" (in Spanish, "*patrón*") is a term for a powerful or rich leader who bestows favors, such as jobs, at his or her whim.

422. *Id.* at 5.

423. See ROSKELLEY & CLARK, *supra* note 255, at 27.

424. See *id.*

425. See *id.* at 26-27.

426. See Lino M. Lopez, *Spanish-Americans in Colorado*, AMERICA, Sept. 18, 1954, at 586; see also ROSKELLEY & CLARK, *supra* note 255, at 28-31; DENVER AREA WELFARE COUNCIL, ACUTE YOUTH PROBLEMS 7 (1950); DENVER AREA WELFARE COUNCIL, THE SPANISH-AMERICAN POPULATION IN DENVER 6-8 (1950); PEOPLE OF DENVER: BOOK ONE, SPANISH-SPEAKING PEOPLE, NINTH GRADE TEXT, DENVER PUBLIC SCHOOLS 50-54 (1951).

427. See, e.g., *supra* notes 418-26; *infra* 430-32. Other university professors devoted their precious time (having no *mañana* complex, one imagines) lecturing to Denver Commission-sponsored workshops, explaining to teachers, police officers, welfare and government workers, and others, how they were to think about their Spanish-speaking neighbors and clients.

place, they became the accepted wisdom. The *Rocky Mountain News*, in a series of articles about the Chicano minority, regurgitated many of the same generalizations about them that the Commission had described, including the mañana attitude.⁴²⁸ As was mentioned earlier, the Commission held a series of workshops in which more than four hundred people participated, representing a wide range of civic and private organizations, including at least twelve city departments, labor unions, community centers, public schools, universities, hospitals and clinics, children's and family agencies, churches, and state and international agencies.⁴²⁹ Each was taught the official dogma about Latinos.

At one workshop, attended by public health nurses, teachers, housing department staff, social workers, employment counselors, and law enforcement officials, an associate professor from the University of Colorado School of Medicine lectured about the Chicano group. Although he pointed out that the group contains quite disparate elements, including Spanish-American families who have lived here for generations, he went on to essentialize as follows:

Wherever they are found in the Southwest, the Spanish-speaking people, as a group, are characterized by: low incomes; limited education . . . a high proportion of workers in low paying, blind-alley jobs; a higher death rate . . . ; segregated residential areas; an extended family system . . . considerable physical mobility . . . and a pervasive belief in witchcraft.⁴³⁰

428. See Perkin, *Schools Can Help*, *supra* note 358; see also *supra* note 425 and accompanying text.

429. See Denver Commission on Human Relations, Box 2, Fourth Annual Workshop in Cultural Relations (1958) (unpublished document, on file in the Denver Public Library Western History Collection) [hereinafter Denver Commission on Human Relations, Cultural Relations Workshop]. A booklet produced by the Steering Committee included a breakdown on attendance by type of organization and reported that these workshops had been held since 1955, with at least 400 people participating. See *id.* "The programs were planned to improve understanding by the public of cultural factors affecting the integration of Spanish-named people into a community. . . . It was felt by the Committee members that most of the facets of the community were reached effectively, with the exception of labor unions and employers." *Id.*

430. Lyle Saunders, *The Spanish-Speaking People of the Southwest*, in Denver Commission on Human Relations, Cultural Relations Workshop § 4

After defining the group, the expert described its "value orientations," which included, of course, a vague sense of time, indifference to achievement and progress, the belief that work is a necessary evil, that fate and supernatural forces conspire to deprive one of much agency, and an acceptance of illness and discomfort as parts of living.⁴³¹

An anthropology professor at the University of Colorado went the previous professor one better. Not only did Mexican Americans have certain cultural traits, they tended to have certain individual ones as well. Among the ones the professor described to a receptive audience of potentially hundreds of policymakers in Colorado were:

1. Deep feeling of inferiority or insufficiency—as reflected in cruelty to animals and inferiors, quick perception of insult, easily wounded pride, withdrawal from unpleasant or potentially damaging situations.
2. Individualism—an insistence on one's personal worth or competence; the lack of team spirit; inability to organize for promoting common ends.
3. Passivity, punctuated by violence or verbal outbursts. (Mexico has a very high homicide rate.)
4. General irritability lightened by 'occasional tenderness and delicacy'.
-
10. Micromania, reflected in a preoccupation with small art and handcraft objects, diminutives and super-diminutives in speech, liking for children and little animals.
11. Attitudes of fatalism and acceptance.
-
13. Sentimentality, introversion, indecision, vagueness in notions of time and space, inability to arrive at positive conclusions.⁴³²

(unpublished document, on file in the Denver Public Library, Western History Collection). Saunders, an Associate Professor of Preventive Medicine and Public Health at the University of Colorado School of Medicine, was also the leader of the Health Section of the Denver Commission on Human Relations. He presented the findings of his paper at the Cultural Relations Workshop.

431. See *id.*

432. *Id.* § 7 (compiled by Gordon Hewes, an Assistant Professor of Anthropology at the University of Colorado, the section describes "Personality Characteristics" of Mexicans "as revealed in Mexican literature"). The professor's diagnosis of *micromania* is intriguing; one imagines the professor, clad in a white

And, in a kind of can-you-top-this analysis, another professor from the University of Denver contributed a paper entitled *Mañana Is Today*.⁴³³ Among other things, the author warned that:

One of the most profitless methods of selling to a Mexicano is the payment plan. One of two conditions will result. He refuses to buy, because he is afraid to tie himself to the future, or he will buy and be unable to make the payments when they fall due. Usually the company will recover the goods and the salesman will swear that the Mexicanos are all dishonest. The wise merchant will approach with his goods on pay day when the people have money, because they will forget there are thirty days to each month and spend in one day the wages that should carry them for the remaining twenty-nine days. The process is the reverse of the widespread belief that the Mexicanos will work a whole month in order to spend it in one day. They will spend it when they get it. In Mexico, the *peones* in a sugar factory were getting fifty *centavos* a day. A very altruistic capitalist increased their wages to a *peso* a day. Three days later, no one showed up to work. When the workers were questioned, it was disclosed that fifty cents a day paid amply for their wants, therefore, when wages went up to a *peso*, it was necessary to work only three days a week.⁴³⁴

Although this expert's list of characteristics of the Mexican culture is perhaps not as damning as the previous one, nevertheless, one can imagine the reaction of any financiers or employers at the workshop to the depiction in the paragraph above of what happens when one lends money to a "Spanish American" or raises his pay.

The same expert went on to describe the Mexicans' quality of stolidity or resignation almost in positive terms, as though it

coat, clipboard in hand, standing in the backyard of a whitewashed adobe home, watching while a Mexican woman weaves an intricate blanket using ancestral materials and design—and muttering "micromania, why isn't she at the Adult School perfecting her English?" On fascination with small things, recall that the early Anglo settlers literally tore the Colorado landscape apart in search for tiny flakes and nuggets of gold.

433. Arthur Campa, *Mañana Is Today*, in Denver Commission on Human Relations, Cultural Relations Workshop, *supra* note 429. Dr. Campa was Chairman of the Modern Language Department of the University of Denver.

434. *Id.* at 5.

helped these people to endure incredible hardship and poverty, hardship that Anglos could not endure:

This very resignation is conducive to a relatively peaceful state of affairs, a condition to be preferred these days to the constant shifting of population which the depression produced The Mexican plods on, whether a burro, small acreage, working for the highway, or employed by an Americano. There is no danger of these men starting a march on Washington.⁴³⁵

(The reader might ask himself or herself, where would an employer be likely to place this kind of plodding worker?)

Many of the sociologists and academic departments that bestowed their expertise on the Commission and its workshop participants may have perfected their images of Mexicans in connection with earlier "Americanization" efforts.⁴³⁶ A number of large Colorado employers had "Sociological Departments" that aimed at inculcating American values, such as the joy of work, in immigrant populations, including the supposedly indolent Mexicans.⁴³⁷ Social workers taught sanitation, hygiene, and proper child-rearing; women were taught cooking and sewing.⁴³⁸

Even the Latino elite contributed toward the construction of their group as inferior and shiftless. The Latino editor of *The Hispanic Contribution to the Story of Colorado*, published in 1976, described Hispanic culture in terms at least one author found decidedly self-flagellating.⁴³⁹ And, at least one of the academic experts who testified about the group's foibles and character defects to the Denver Commission was Hispanic.⁴⁴⁰ Yet, as Sarah Deutsch observed, when Anglos

435. *Id.* at 6.

436. *See supra* notes 14-15, 287-90 and accompanying text.

437. *See* DEUTSCH, *supra* note 47, at 95-99 (describing programs of the Sociological Department of the Colorado Fuel and Iron Company to transform Hispanic miners and their families into patriotic, culturally homogenous, respectful American workers).

438. *See id.*

439. *See id.* at 6 (citing THE HISPANIC CONTRIBUTION TO THE STATE OF COLORADO xviii (José de Onís ed., 1976)); *see also* ARTHUR CAMPA, HISPANIC CULTURE IN THE SOUTHWEST 211-16, 282-90 (1979).

440. *See supra* note 426 and accompanying text (on the role of Lino M. Lopez).

first came to Colorado, Texas, and California, they, too, displayed typical immigrant behavior: clustering, voluntary associations, and the establishment of a foreign-language press. They also carried weapons, held themselves apart from the local culture, and showed little attachment to the region beyond satisfying basic materialistic needs.⁴⁴¹ Could not an "immigrant-study" commission, composed of Native Americans and Spanish ranchers, have found much grist for *their* mill?

To see how devastatingly influential the Denver Commission's depiction of the Latino community was, consider that a different task force, the Rocky Mountain Council on Inter-American Affairs, which sprang up a short time after the Commission did, published a widely cited report entitled *When Different Cultures Meet*.⁴⁴² In terms that echoed the Commission's, it described certain "problems [with the Mexican-American community] related to personal and family traits."⁴⁴³ Quoting leading academic authorities, the task force wrote that Mexican people have a *mañana* attitude and an accepting, fatalistic philosophy.⁴⁴⁴ "To have risen up and exerted strenuous efforts to change things as they were would have been as unnatural for the Spanish-American agricultural laborers as it would be for the average Yankee to take things lying down."⁴⁴⁵ Mexicans have been servile in Mexico for generations, the report quoted a Ph.D. as saying, so why should they not remain so today?⁴⁴⁶ With little concept of money but a penchant to gamble and spend recklessly, the Mexican is, nevertheless "capable of learning to handle machinery . . . when given training and opportunity."⁴⁴⁷ "[L]eisure is of greater value in their scheme of things than money or possessions,"⁴⁴⁸ they complain of physical exhaustion, and settle arguments with knives or guns.⁴⁴⁹ Ignorant of the scientific cause of disease, they think it inevitable or the result of the evil eye.⁴⁵⁰ The task force further reported it is difficult

441. See DEUTSCH, *supra* note 47, at 7.

442. ROSKELLEY & CLARK, *supra* note 255.

443. *Id.* at 21-25.

444. See *id.* at 26-27.

445. *Id.* at 27.

446. See *id.*

447. *Id.* at 24.

448. *Id.* at 30.

449. See *id.* at 33.

450. See *id.* at 24.

to get them to accept the concept of vaccination, sanitation, garbage disposal, refrigeration, or the use of screens or fly control.⁴⁵¹ "For this reason storekeepers often object to [their] personal appearance and . . . handling of goods."⁴⁵² The report accordingly urged Mexicans to adapt, improve their own lot, and eliminate their shortcomings. "Are they willing to do what is necessary in order to remove any cause for the finger of scorn? . . . Will they paint their houses and keep them in good repair . . . ?"⁴⁵³ Yet, the report observed tellingly, that when they do these things, farmers regard them as Anglicized and useless for work in the fields.⁴⁵⁴

Many of the same sources mentioned above found their way into a booklet prepared by the Denver Public Schools for use in the ninth grade. Entitled *People of Denver, Book One: Spanish-Speaking People*, this pamphlet instructed all Denver schoolchildren in how to think about Chicanos. The reader can imagine the content: Mexican Americans came across as backward, living in dilapidated houses, and best suited for the manual professions.⁴⁵⁵ The 119-page booklet featured interviews with two Mexican children who came to Denver and claimed they encountered "very little [discrimination] and from people of no importance."⁴⁵⁶

In 1974, fully twenty years after the Commission wrote its first report, a University of Colorado professor testified in a case brought by the Mexican American Legal Defense and Education Fund to desegregate the Grand Junction schools. On behalf of the district, which had been accused of discriminatory treatment toward its Mexican-American children, of never having had a Mexican American on its Board of Education, of maintaining an entirely Anglo administrative staff (with one exception), and of hiring thirty-one principals, not one of whom was Hispanic, the expert testified that the situation in the schools was normal and what might be

451. See *id.*

452. *Id.*

453. *Id.* at 43.

454. See *id.* at 37.

455. See PEOPLE OF DENVER: BOOK ONE, SPANISH SPEAKING PEOPLE, NINTH GRADE TEXT, DENVER PUBLIC SCHOOLS, *supra* note 426, at 20, 38-45.

456. *Id.* at 46. The meaning of the phrase "of no importance" is not entirely clear. It probably means ignorant Anglos whose biased views are somehow unimportant and merit no attention from the child.

expected in a fair universe.⁴⁵⁷ A striking disparity between the achievement test scores of white and Mexican-American schoolchildren did not bespeak structurally biased teaching and curriculum, much less outright discrimination, the expert said.⁴⁵⁸ Rather, the gap in the scores could easily be explained by social and cultural factors, including lack of motivation, for which the school district was not responsible.⁴⁵⁹

One year later, the Colorado Department of Education published *A History of Civil Rights and Minority Groups in Colorado*.⁴⁶⁰ Aimed at an audience of schoolchildren and teachers, the 1975 pamphlet described Chicano history and culture in the following terms:

For 200 years they lived an unhurried, unharried, agricultural life in harmony with their surroundings long before the Anglo-Saxon pioneers came to Colorado Following the Gold Rush, land grabbing and the treatment of the Spanish-speaking people as inferiors began There was a lack of understanding between the two cultures because they represented different ways of facing life. The Anglo tended to believe that he was master of his fate . . . whereas the Spanish-American tended to accept his destiny and to see himself as living-in-nature These cultural values have influenced the present-day attitudes of the Spanish-Americans, and the conflicts with the values of the dominant culture have created strains which have resulted in high rates of crime and delinquency among the Spanish-Americans today.⁴⁶¹

Apparently an equal opportunity slanderer, the Department went on to say that "[p]sychologically the Indian has not yet established his identity for the modern age."⁴⁶²

457. See *Otero v. Mesa County Valley Sch. Dist. No. 51*, 408 F. Supp. 162 (D. Colo. 1975), *remanded on other grounds*, 568 F.2d 1312 (10th Cir. 1977), *on remand*, 470 F. Supp. 326 (1979), *aff'd*, 628 F.2d 1271 (1980) (Dr. Gene Glass, the expert witness, was a professor of education at the University of Colorado).

458. See MICHAEL A. REBELL & ARTHUR R. BLOCK, *EDUCATIONAL POLICY MAKING AND THE COURTS: AN EMPIRICAL STUDY OF JUDICIAL ACTIVISM* 162 (1982).

459. See *id.*

460. COLO. DEPT OF EDUC., *supra* note 70.

461. *Id.* at 1.

462. *Id.* at 2. Elite groups played a familiar role later in Colorado history. In the early 1970s, activism broke out in Denver when Corky Gonzalez led protests against police brutality, supported high school walkouts, formed the

C. Politics and Schools

Two final areas deserve brief, separate treatment because they were not much addressed by the Commission or its progeny—the first because there was little to investigate, the second because the Commission seemed more concerned with other areas.

1. Politics

No person of color has ever served as Governor of Colorado, and only a handful of blacks and Hispanics in the state legislature.⁴⁶³ Until November 1998, not one Hispanic had been elected to a statewide office in the history of Colorado, even though today (at thirteen percent of the total population) and for much of the state's history, Hispanics have been Colorado's largest minority group.⁴⁶⁴ Wellington Webb, a black, and Federico Peña, a Latino, have each served as Mayor

Crusade for Justice, and later ran candidates under the banner of the La Raza Unida Party. He made connections with Lopez Reies Tijerina, the land-revolt leader of New Mexico, Cesar Chavez of the California-based farmworkers movement, and Martin Luther King before he was assassinated. See RODOLFO ACUÑA, *OCCUPIED AMERICA: A HISTORY OF CHICANOS* 342-44 (3d ed. 1988); LEONARD & NOEL, *supra* note 47, at 394-96; see also Frank Moya, *Police-Chicano Encounters Are Numerous*, ROCKY MTN. NEWS, Aug. 2, 1977, at 5 (same, describing continuing incidents of community tension over police encounters and insensitivity in the public schools). The movement foundered when government and foundations poured money into their own designated "brokers" and moderate Chicano organizations. See ACUÑA, *supra*, at 377-78, 380; Ernesto Vigil, *Advent*, in LA GENTE, *supra* note 47, at 190. In one episode, the Ford Foundation backed the League of Latin American Citizens, and the GI Forum negotiated an end to a boycott against the Coors Company, which had a glaringly poor record of discrimination against Latino workers. See ACUÑA, *supra*, at 380. Signed in 1984, the agreement ended the boycott in exchange for \$250 million to be paid to the Chicano community in the form of ads in Hispanic media, support to community organizations, and scholarships. See *id.*

463. See Editorial, *Breaking a Barrier*, DENV. POST, Nov. 5, 1998, at B10. Courts also found that Logan County systematically excluded Spanish-surnamed persons from jury duty. See *Court Finds Race Bias in Logan County*, ROCKY MTN. NEWS, Nov. 10, 1959, at 24. Colorado was included under the 1975 Voting Rights Act because of a pattern of discrimination against Chicanos. See Rodolfo de la Garza, *Chicano Political Power: An Increasingly Important Role*, DENV. POST, Nov. 25, 1979, (Empire Magazine) at 12.

464. See *Breaking a Barrier*, *supra* note 463; Callahan, *supra* note 3; Pappas, *supra* note 411 (LARASA, a Denver-based research institute, estimates that since the 1990 census, Latino portion of the state population has grown to 14%).

of Denver, although their campaigns were marked by intense, ugly opposition and threats of violence from disapproving whites.⁴⁶⁵ Before Ken Salazar recently won election as Colorado Attorney General, only one Hispanic, John Rosales, who ran for Secretary of State in 1970 on the Democratic ticket, had won a statewide election contest.⁴⁶⁶ Although Rosales won his party's nomination, he lost in the general election to a Republican opponent. Reflecting on Colorado's poor record with Hispanics running for statewide office, one columnist wrote:

I've long watched politicians wrench their arms out of their sockets to pat themselves on the back about this states' supposed racial tolerance. In fact, that reputation is at best a half truth.

But the story with our largest minority, Hispanics, is far different.

....

What accounts for the seeming paradox of a state that is relatively open to African-American candidates but refuses to elect Hispanics? Sociologists have long noted that where there are two significant minorities in an area, the larger minority usually suffers more discrimination. People can showcase their toleration toward the smaller minority, which they seldom encounter, while they resent and fear the larger minority as more of a threat.

Growing up in northeastern Colorado in the '50s and '60s, I certainly found this pattern. People in our area were relatively tolerant toward blacks—whom we rarely met in person and experienced mostly as the televised images of Willie Mays and Jackie Robinson. In the eight high schools of my . . . Conference, only one . . . had a black student. But there were Hispanic students in other schools, including my own . . . and I will forever be ashamed of the way they were treated.⁴⁶⁷

What explains the better record of the much smaller African-American community in getting its candidates elected

465. See Bob Ewegen, *Hispanic Candidates Face Uphill Climb*, DENV. POST, May 5, 1998, at B10; Mark Obmascik, *Own up to City's Racial Rift*, DENV. POST, Mar. 22, 1995, at H1.

466. See Ewegen, *supra* note 465.

467. *Id.*

to state office? The columnist speculated that the reason had to do with the group's relative smallness. Citing the writing of expert sociologists, the columnist speculated that wherever two minority groups coexist in the same region, the majority chooses the smaller, less threatening group as pets or favorites.⁴⁶⁸ They promote and help this smaller group, ignoring or suppressing the larger, more threatening one. When challenged, they can then point out the favored treatment they have been affording the other group to rebut any implication of racism.⁴⁶⁹

2. Public Schools

The Denver Commission did not explore discrimination in the educational system as thoroughly as it did in other areas. It did, however, write that Anglo teachers "generally preferred 'white' students to [Chicano], Nisei, or Negroes in that order"⁴⁷⁰ and that "White, Negro and Nisei students are much more likely to complete their educations than [Mexicans] [I]n one year there were only six Spanish-American students graduating from high school, for every 100 . . . in kindergarten."⁴⁷¹ The reader may also wish to recall the survey of schoolchildren's attitudes mentioned in a previous section. Filled out by 915 junior and senior high students in a "representative' Colorado county," the 1940 survey disclosed that thirty-one percent would deny Mexicans citizenship; forty-eight percent would not accept one as a friend; and ninety-four percent would not marry one.⁴⁷²

Robert L. Perkin, a newspaper writer who took an interest in the work of the Commission and wrote a series of articles in the *Rocky Mountain News* about minorities, wrote that the "cultural background" of the Spanish-American community plays a part in their high school drop-out rate—ninety percent by one study.⁴⁷³ He mentioned the "mañana" and "patrone" syndromes as serious disadvantages for Chicano children in

468. See *id.*

469. See *id.*

470. DENVER COMM'N ON HUMAN RELATIONS, *supra* note 257, at 56.

471. *Id.* at 60.

472. See DEUTSCH, *supra* note 47, at 174-75.

473. See Perkin, *Schools Can Help*, *supra* note 358.

school and in our fast-paced competitive culture.⁴⁷⁴ The Denver Unity Council study conducted around the same time found "economic pressure" to be the most influential reason for school failure for Mexican-American schoolchildren. It did add, however, that the indifference of teachers and discriminatory treatment by other pupils played parts as well.⁴⁷⁵

Other writers not aligned with the state were more candid about the quality of educational opportunity Colorado afforded minority children during this early period. Sarah Deutsch describes Chicano schoolchildren taunted in school and bright achievers discouraged from going to college in favor of working in the beet fields, supposedly their lot in life.⁴⁷⁶ Evidently, many succumbed to this pressure. Deutsch reports that there were only eight Chicanos and seven Chicanas in Denver's public junior and senior high schools in 1925.⁴⁷⁷ Chicana teaching applicants were told "they'll never permit girls of your race to teach in our American schools."⁴⁷⁸ Oral interviews describe children who were punished for speaking Spanish in Denver schools in the 1950s and 1960s. One child "remembers that . . . it was a practice of some teachers to wash out with soap the mouths of children who spoke Spanish, as if they had uttered obscenities."⁴⁷⁹ Another reported that even when she spoke English a teacher mocked her Spanish accent in front of her classmates. "It left a deep emotional scar."⁴⁸⁰ Another, now a teacher, reported that when she was a pupil, "teachers would sharpen pencils and push the leads into our fingers to keep us from speaking Spanish."⁴⁸¹ A high-achieving black student recalled that her Dean of Students called all the top students to his office, then was astonished to find that one was

474. See *id.*; see *supra* note 421 (explaining term "patrone").

475. See Perkin, *Schools Can Help*, *supra* note 358; see also DENVER UNITY COUNCIL, *supra* note 298.

476. See DEUTSCH, *supra* note 47, at 139-40.

477. See *id.* at 147; see also Denver Commission on Human Relations, Box 5, Meeting of the Counseling Committee of the Denver Coordinating Council, Notes (June 19, 1958) (unpublished document, on file in the Denver Public Library, Western History Collection) (placement in a "traditional" job was true for all minority youth).

478. DEUTSCH, *supra* note 47, at 147 (footnote omitted).

479. Richard S. Johnson, *Chicano Education: A Continuing Uphill Fight*, DENV. POST, Nov. 25, 1979, (Empire Magazine) at 41.

480. *Id.*

481. *Id.*

black.⁴⁸² He asked her what she planned to do after graduation and reacted in disbelief when she replied she hoped to go to college.⁴⁸³ "Why?" he asked. "[A]bout all you could do would be to work in somebody's kitchen or clean somebody's house."⁴⁸⁴ She, too, persevered and became a teacher.⁴⁸⁵ Another black parent reported that her daughter, an "A" student at a Denver high school, made the mistake of letting her counselor know that she wanted to go to the University of Colorado. "[The school] dropped her grades," but she went anyway.⁴⁸⁶

School officials further actively excluded three groups of Mexican children or did little to encourage their enrollment: migrant, high-school age, and post-secondary age students.⁴⁸⁷ And public schools attempted to extinguish Spanish as "part of a general nativist sentiment" and misguided desire to "promote the purity of Anglo-American culture."⁴⁸⁸ Conditions worsened in mid-century as educators seized on notions of "deficit thinking," according to which limited intelligence, lack of motivation, and poor family socialization explained Mexican schoolchildren's lack of success at school. Eight separate studies in the period 1922 to 1929 implied that Mexican schoolchildren genetically have lower IQs than whites.⁴⁸⁹

482. See GRANT ET AL., *supra* note 211, at 43-44.

483. See *id.*

484. *Id.*

485. See *id.*

486. *Id.* at 53. "They" refers to the school authorities; "dropped her grades" means that the school changed or misrepresented the student's grades in a downward direction, so as to frustrate her desire to attend an elite college. Students were not the only ones to experience or fear devaluation on account of their race. See, e.g., Carlos Illescas, *A Pioneer Principled in Fairness*, DENV. POST, July 20, 1998, at A1 (describing the career and life of the first black principal in Denver: "It was then [1955] that Maxwell realized her greatest fear: She would have to succeed at all costs. So she meticulously, repeatedly went over everything she did—payroll, reviews, grading—to make sure there were no mistakes."). She feared that if she slipped, no more blacks would be allowed to be principals. See *id.* Her fears were not unfounded: despite her obsession with perfection, "[a] few [white] families even moved." *Id.*; cf. *supra* note 432 and accompanying text (sociologist discovers a new syndrome, "micromania," in Mexican-American community).

487. See Guadalupe San Miguel, Jr. & Richard R. Valencia, *From the Treaty of Guadalupe Hidalgo to Hopwood: The Educational Plight and Struggle of Mexican Americans in the Southwest*, 68 HARV. EDUC. REV. 353, 365 (1998).

488. *Id.* at 361.

489. See *id.* at 368-69.

Beginning in the late 1960s and continuing for about the next ten years, things came to a head. The *Keyes* litigation,⁴⁹⁰ which began in 1969, documented intentional, governmentally backed segregation in the Denver schools.⁴⁹¹ The school board had constructed a school in the middle of the largely black Park Hill area,⁴⁹² used optional attendance zones,⁴⁹³ and excessively relied on mobile classroom units, all adding up to "an unconstitutional policy of deliberate racial segregation."⁴⁹⁴ The school board also had adopted three resolutions designed to desegregate certain schools and discharge their obligations under a district court mandate.⁴⁹⁵ But, "[f]ollowing an election which produced a Board majority opposed to the resolutions, [they] were rescinded."⁴⁹⁶ The U.S. Supreme Court also found that "teachers and staff had for years been assigned on the basis of a minority teacher to a minority school."⁴⁹⁷ The Court, compelled by a mountain of evidence, ordered Denver schools to desegregate.⁴⁹⁸

In another area of the state, the U.S. Department of Health, Education and Welfare found the Pueblo School district in violation of federal civil rights legislation and ordered it to "submit an affirmative action plan on teacher hiring, student assignment and bilingual education within 60 days."⁴⁹⁹ At a regional level, the U.S. Commission on Civil Rights produced a massive six-part report on Mexican Americans in public schools of the Southwest, including Colorado, echoing many of the same conclusions.⁵⁰⁰

490. *Keyes v. School Dist. No. 1*, 413 U.S. 189 (1973).

491. *See id.* at 192.

492. *See id.*

493. *See id.*

494. *Id.*

495. *See id.*

496. *Id.*

497. *Id.* at 200.

498. *See id.* at 192.

499. Jane Earle, *Pueblo School Policy Challenged*, DENV. POST, Dec. 16, 1974, at 3.

500. *See* San Miguel & Valencia, *supra* note 487, at 379. The Mexican-American Education Study reports include: (1) Ethnic Isolation of Mexican Americans in the Public Schools of the Southwest; (2) The Unfinished Education. Outcomes for Minorities in the Five Southwestern States; (3) The Excluded Student. Educational Practices Affecting Mexican Americans in the Southwest; (4) Mexican American Education in Texas. A Function of Wealth; (5) Teachers and Students; and (6) Toward Quality Education for Mexican Americans.

The responses to the desegregation orders were immediate and very visible. White families moved out of Denver in large numbers to avoid busing and desegregation.⁵⁰¹ Violence broke out; forty-six school buses were dynamited.⁵⁰² The house of district judge William Doyle, who issued the Colorado desegregation order, was bombed, as was that of Wilfred C. Keyes, the plaintiff in the *Keyes* case.⁵⁰³

The present day effects of desegregation are equally disappointing. Writing about Chicanos, two scholars in the *Harvard Education Review* concluded in 1998: "School segregation [in the Southwest] is on the rise . . . [and the] Mexican American high school [completion] rate . . . continues to lag."⁵⁰⁴ They cite a government study finding massive failure on the part of Colorado schools and others, showing Mexican-American students over-represented twofold in low-ability classes and "substantially under-represented in the college preparatory courses, particularly 'honors courses.'"⁵⁰⁵ One educator told us that although the Denver school district is about seventy-five percent minority, of tens of thousands of students, only 260 Latinos took the ACT (American College Test) in a recent year and only 53, the SAT (Scholastic Aptitude Test).⁵⁰⁶ These tests, of course, are a precondition for applying to most selective colleges and universities. The educator explained that schools simply do not encourage Latino students to take the tests; by contrast, wealthy districts pay students to take them.⁵⁰⁷

A 1997 report by the Hispanic Education Advisory Council to the Denver school district pointed out that although Hispanic students make up nearly half of all enrollment in the Denver schools, their graduation rate is lower than fifty

501. See LEONARD & NOEL, *supra* note 47, at 378-79.

502. See *id.* at 380.

503. See *id.*

504. San Miguel & Valencia, *supra* note 487, at 378.

505. *Id.* at 383 (emphasis in original). They also note that school segregation is on the rise, see *id.* at 370-71, that Mexican-American teachers are few, see *id.* at 371, and that Oscar Lewis's culture-of-poverty thesis is used, consciously or unconsciously, to rationalize schools' failure to produce satisfactory educational results with Latino children, see *id.* at 369-70.

506. See Interview with an educator, Latino/a Research & Policy Center, University of Colorado at Denver (Nov. 10, 1998).

507. See *id.*

percent, while the overall state rate is 77.6.⁵⁰⁸ In a recent year, there were 1428 Hispanic high school juniors in Denver public schools. The next year, the senior class contained only 822—a loss of 42.5 percent in one year.⁵⁰⁹ Like the Harvard researchers, the Council found low participation by Latinos in accelerated courses, but a high incidence of suspensions, expulsions, and other forms of disciplinary punishment.⁵¹⁰ “Staff from [Highly Gifted and Talented Programs] have apparently determined that there are *no* highly gifted and talented bilingual students, a finding that is incomprehensible.”⁵¹¹ “Some teachers have asserted that non-Hispanic parents perceive that bilingual students will somehow dilute the program.”⁵¹² The *Denver Post* recently reported that the district has fewer black teachers today than it did in the 1970s.⁵¹³ A recent report of the Colorado Commission on Higher Education, after citing dismal statistics on minority student and faculty retention, concludes “Colorado . . . is effectively losing ground in the effort to keep pace with the growth of minorities in society overall.”⁵¹⁴

Differential public school funding continues to be a problem in Colorado, even after reform legislation enacted following a landmark suit ostensibly smoothed out some of the differences among districts.⁵¹⁵ Because of the unfair way school construction and repairs are financed, some schools are

508. See HISPANIC EDUC. ADVISORY COUNCIL, DENVER PUB. SCHS., REPORT TO THE BOARD OF EDUCATION 1, 3 (1997).

509. See *id.* at 4.

510. See *id.* at 8-10; see also Janet Bingham, *Minority Suspensions a Shocker*, DENV. POST, Jan. 13, 1996, at A1 (59% of black male middle and high school students suspended in Colorado Springs; 41% for minorities statewide).

511. HISPANIC EDUC. ADVISORY COUNCIL, *supra* note 508, at 10 (emphasis added).

512. *Id.*

513. See Sheba Wheeler, *Civil Rights Struggle Continues*, DENV. POST, Jan. 18, 1997, at A1.

514. COLO. COMM'N ON HIGHER EDUC., MIND OVER MATTER: MOVING BEYOND THE MYTHS OF RECRUITING AND RETAINING MINORITY FACULTY AND STAFF 26 (1990). On losing ground, compare Janet Bingham, *Jeffco May Remove Workbook: Stereotypes in "Today's Teen"*, DENV. POST, Feb. 4, 1999, at B1 (depicting Latinos as dirty and unkempt, oblivious of hygiene, and living in a trailer park), with other stereotypical treatment given the group throughout Colorado's history.

515. See *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005 (Colo. 1982) (finding gross disparities, but no violation of equal protection). The Colorado legislature changed the funding formula to equalize the differences somewhat. See *id.*; *infra* note 517 and accompanying text.

deteriorating and dangerous, with carbon monoxide at dangerously high levels and leaking roofs.⁵¹⁶ “[H]eavy reliance on property taxes . . . [produces] vast disparities in property wealth among districts. The Legislature [offsets] some of those disparities by supplementing the money that poorer districts raise for instruction, but it does little to equalize . . . money for buildings.”⁵¹⁷ One minority recruiter from Tufts University, an elite eastern private school, told us that she was told not to “waste [her] time” recruiting from Denver schools, but to focus on the suburbs.⁵¹⁸ With conditions like those described in this subsection, one cannot help but wonder whether her instructions were not, unfortunately, right and sensible.

V. RURAL COLORADO

The Denver Commission paid little attention to conditions in three sectors of Colorado industry—farmworking, mining, and meatpacking—that had little presence in the capital city, Denver. Did Colorado’s rural minorities, living in the wide-open spaces of a rich, scenically spectacular state, meet with better fortunes than those living in its congested cities?

A. Farmwork

For farmworkers, the answer must be “no.” Sarah Deutsch reported that when a sugar company first brought Mexican beetworkers to Rocky Ford, Colorado, Anglo residents were outraged and ran them out of town.⁵¹⁹ By 1903, the need for labor overcame prejudice, and the Anglos came to tolerate

516. See Janet Bingham, *Lawyers Debate Fairness of State Funding for Schools*, DENV. POST, Aug. 29, 1998, at B3; Steve Lipsler, *School Officials Look to Lawsuit*, DENV. POST, Dec. 25, 1998, at B6.

517. Bingham, *supra* note 516; see also Jared A. Levy, *Blinking at Reality: The Implications of Justice Clarence Thomas’s Influential Approach to Race and Education*, 78 B.U. L. REV. 575, 603-15 (1998). Colorado ranks 49th among states in per-pupil spending in schools. See Poppen, *supra* note 284.

518. See Interview with a Latina graduate student, University of Colorado (Nov. 6, 1998).

519. See DEUTSCH, *supra* note 47, at 33. Recruitment brochures featured attractive houses, with garden plots, water, milk, and eggs. See *id.* at 129. Early beetworkers were German-Russians; these were much more acceptable. See ACUÑA, *supra* note 462, at 178. But they insisted on owning their own land, which disequipped them for farm labor jobs for others. See José Aguayo, *Los Betabeleros (The Beetworkers)*, in LA GENTE, *supra* note 47.

the Mexicans.⁵²⁰ Still, when the American Beet Sugar Company planned thirty-two colonies of semi-permanent workers, it located them "where the residence of Mexican people would be least objectionable to people prejudiced against them."⁵²¹ Many shelters were old cattle corrals, for which the farmworkers paid exorbitant rents.⁵²² Still, Mexican farmworkers were scarcely the passive, accepting victims that the Commission's experts described. Deutsch instead found aggressive, adaptive patterns in a "regional community" throughout New Mexico and Colorado from 1880 to 1940.⁵²³ Farmworkers from southern Colorado, New Mexico, or even Mexico migrated to the beetfields because that was where economic opportunity lay. They sent money home; later, when it became possible for their families to join them, they sent for them and set up camp in the improvised housing provided by their employers.⁵²⁴

They had much to contend with, however. Many white Coloradans, abetted by the Great Western Sugar Company and enormous subsidies from the federal government,⁵²⁵ intended to marginalize these people in order to keep a cheap work force: one they could send away in the off-season to return only when needed.⁵²⁶ Anglos made little distinction between Mexicans and blacks. The Klan's burning crosses marked the edges of the adobe colonies set up by Great Western to house the workers.⁵²⁷ When the farmworkers ventured into town, they were met with "White Trade Only" and "No Mexican Trade Wanted" signs in restaurants, barbershops, and movie

520. See DEUTSCH, *supra* note 47, at 33. By the 1920s, Colorado "provided almost 20,000 jobs [in the sugar beet industry] each season, while the state's railroads employed only about 5000 Chicanos . . . and its coal mines just over 3000." *Id.* at 128-29.

521. *Id.* at 116 (quoting D.L. Joehnck, Next Year's Labor Contract 2 (Jan. 1921) (unpublished manuscript, on file in the Great Western Sugar Co. Papers, Box 4, Western Historical Collections, University of Colorado, Boulder)).

522. See *id.*

523. See *id.* at 3-12.

524. See *id.* at 33-35.

525. See MCWILLIAMS, *supra* note 6, at 122 (\$350,000,000 annually in 1945 enabled these rural sweatshops to operate—a type of "industrialized slavery").

526. See, e.g., DEUTSCH, *supra* note 47, at 132-33 (explaining the seasonal patterns of labor of Mexican workers in Texas). Many of these workers spent the winter in Denver slums. See *id.*

527. See *id.* at 134.

theaters.⁵²⁸ When, later in the century, Great Western decided to set up semi-permanent settlements in order to keep down its recruiting costs, the small lots they made available had no shade or farmland and were "a mile or two outside of Anglo towns or literally across the tracks."⁵²⁹ The houses were shacks, with few conveniences and "hardly fit for an animal."⁵³⁰ Owning such a home, especially without a plot of ground on which to raise crops for one's family, was no step toward upward mobility.⁵³¹

Landowners also were reluctant to rent to Chicanos and followed the pattern, familiar from our study of Denver, of separating the residential areas of whites and Mexicans.⁵³² One Greeley realtor is described as making a living "off the Spanish" by lending them money for houses and then repossessing them when they were partially paid.⁵³³ According to Deutsch, "[a] reluctant Anglo host society joined with the dynamics of the beet industry to keep most Chicanos . . . hovering on the margins of society."⁵³⁴ In fact it was the very "lack of movement between tenancy and ownership that reconciled Anglos to Chicano lessees at all."⁵³⁵ As one planter's wife explained, "[t]here is no danger from the Mexicans. They won't save enough to buy land."⁵³⁶

The decision to keep sugar beetworkers from establishing a toehold in rural Colorado was thus quite conscious. Moreover, a Denver Commission writer, writing in 1949,

528. See *id.*; see also Aguayo, *supra* note 519, at 118 ("No dogs or Mexicans allowed"); ACUÑA, *supra* note 462, at 219 (Colorado denied beetworkers admission to public places and segregated them residentially).

529. DEUTSCH, *supra* note 47, at 134.

530. Kulkosky, *supra* note 263, at 126. Great Western, a recruiting company for sugar beet farmers, had recruited workers in Mexico and New Mexico with brochures promising "you'd rake in the money," and handing out "brochures that led Hispanics to expect a garden plot for each family, decent housing, a water supply, and a friendly employer who might provide milk and eggs at cost." DEUTSCH, *supra* note 47, at 129. Most shacks had no screens, toilets, sanitation, or water, see *id.* at 127; recall the sociologist who complained that the Mexicans lacked any concept of "fly control," see *supra* note 451 and accompanying text.

531. See DEUTSCH, *supra* note 47, at 129.

532. See *id.* at 133.

533. See *id.*

534. *Id.*

535. *Id.*

536. *Id.*

almost thirty years after the period described by Deutsch, found that little had changed:

The account given by the laborer was confirmed by the employer. The employer owned and lived on a piece of land of some 200 acres, in one corner of which was an area of about 1.5 acres above a ditch line that had never been used for anything. The . . . laborer said that he had on several occasions tried to buy this land to build a house there, but that the farmer had refused to sell it to him. The farmer reported: "I will not sell him the land because I always want to be in a position where I can tell the _____ outfit where to head in. If these workers become independent, they are no good."⁵³⁷

The farmer apparently felt that insecurity on the part of the laborers was a prerequisite to their effective service.⁵³⁸

Moreover, the growers intentionally left the workers' cost of living out of the equation when calculating their wages. The cost of living in Denver during the offseason was \$1,197.78.⁵³⁹ In the main growing areas, over half the contract families with children earned less than \$900; forty percent of the families earned less than \$700. Most workers were forced, at season's end, to return home with the roughly \$150 they had left to pay taxes and make it through the winter.⁵⁴⁰ According to historian Carey McWilliams, the Great Western Sugar Company resorted to the device of simply pauperizing the Mexican workers to assure that they could not go home to Mexico between seasons.⁵⁴¹ Another device was to withhold pay at the end of the season.⁵⁴²

At one point, Anglo farmers petitioned Congress to allow unrestricted Mexican immigration; at the same time they were protesting invasion of their neighborhoods by "Mexicans,"⁵⁴³

537. ROSKELLEY & CLARK, *supra* note 255, at 17.

538. *See id.*

539. *See* DEUTSCH, *supra* note 47, at 130.

540. *See id.* at 131.

541. *See* MCWILLIAMS, *supra* note 6, at 123; *see also* Kulkosky, *supra* note 263, at 123 (wages too low for workers from Mexico to return home, so they spent winter in Denver slums).

542. *See* MCWILLIAMS, *supra* note 6, at 124. (Mexican consul told McWilliams he always had 500 or more such claims under investigation in the period in question).

543. *See* DEUTSCH, *supra* note 47, at 134.

and Colorado state welfare agencies routinely eliminated all recipients with Mexican-sounding names from the welfare rolls when sugar beet season began, presuming them all to be potential beet hands who could work.⁵⁴⁴ One Colorado congressman denied that the sugar company had built houses for the workers.⁵⁴⁵ Myths and euphemisms were used to justify poor treatment. A Holly Sugar vice president, for example, told a United States Senate committee that the Mexicans were "content to conduct their own community life apart from other races" and that segregation was due to their clannishness.⁵⁴⁶ The Fort Collins hospital treated injured or ill Mexicans only in the basement, insisting "we can serve them better" there, and "they can talk to each other in the same language."⁵⁴⁷

Although rural school authorities argued that the schooling migrant children received was better than that which they enjoyed in the Mexican villages from which they came, the public school environment in Colorado was certainly more hostile.⁵⁴⁸ Teachers regarded Mexican children as only suited to grow up to be farmworkers, made little effort to encourage them to rise higher, and segregated them away from whites.⁵⁴⁹ A school superintendent in Weld County, Colorado, insisted that "the respectable white people of [that county] do not want their children to sit alongside of dirty, filthy, disease-infested Mexicans,"⁵⁵⁰ and rural counties tolerated truancy that would not have been allowed to go unchecked for whites.⁵⁵¹ A sugar company official said candidly, "If every child had a high school education . . . who will labor?"⁵⁵² According to an investigator, school officials widely believed that "a cheap labor supply is necessary for this industry . . . and that the Spanish-

544. See MCWILLIAMS, *supra* note 6, at 127.

545. See DEUTSCH, *supra* note 47, at 135.

546. *Id.*

547. *Id.* (citing an interview with Arthur Maes).

548. See *id.* at 140-41.

549. See *id.* at 141.

550. *Id.* at 140.

551. See Aguayo, *supra* note 519, at 118. Great Western created yet another myth to justify a pattern in which child workers would miss up to 1/3 of the school year. See DEUTSCH, *supra* note 47, at 141. The company claimed that "while beet children may be absent for several weeks each year from their classes in geography and spelling, they learned not only 'industry and thrift,' but the 'craft of their fathers,' a blessing for 'people whose social and intellectual state may be below the standards of our ideals.'" *Id.*

552. DEUTSCH, *supra* note 47, at 141.

American or Mexican is the one to furnish it. Too regular school attendance would not be compatible with this.”⁵⁵³ One educator warned: “We are building up a caste system that inside of two generations will be worse than India ever dreamed of.”⁵⁵⁴

Far from liberating the next generations of Chicanos from their backbreaking labor, the educational system of rural Colorado bound them even more tightly to the chains of poverty and to their fate as replacement labor for their parents when they sickened or died.⁵⁵⁵ Susan Deutsch described the predicament of Chicanas who sought higher education—meaning high school—in which they aspired to being clerks or teachers but found the job market closed to them. By 1930, only five percent of Colorado’s gainfully employed Chicanas held white-collar jobs as clerks, teachers, managers, or other professionals.⁵⁵⁶ In Greeley, no Hispanic clerked in the stores until after World War II ended, which brought a slight softening of racial attitudes and the color line.⁵⁵⁷ Rural Weld County, at the end of the decade of the 1940s, had only one Hispanic teacher.⁵⁵⁸ An administrator of one Colorado school said that with Mexican-American girls, the school would place special emphasis on homecraft, domestic science, and care of the home. He commented that “[t]he Mexicans show considerable aptitude for hand work of any kind” (recall the sociologists’ discovery of “micromania”) and indicated that “girls should be trained to become domestic servants, and to do various kinds of hand work.”⁵⁵⁹

Recall that our previous discussion of court records from early in the century showed hardly any Mexican Americans in juvenile court.⁵⁶⁰ By the 1920s, the demonization of Mexicans had progressed so far that a Weld County sheriff was able to pronounce confidently that “a Mexican is a ‘natural born liar, thief, and gambler.’”⁵⁶¹ In fact, more illegality probably lay on the law enforcement side. Charges of police harassment of

553. *Id.*

554. *Id.* at 141-42.

555. *See id.*

556. *See id.* at 147.

557. *See id.*

558. *See id.*

559. *Id.* at 148.

560. *See supra* notes 392-93 and accompanying text.

561. DEUTSCH, *supra* note 47, at 151.

Mexicans during the Klan years and later were rife, so much so that the federal government felt it necessary to conduct an investigation.⁵⁶² Anglos also greatly distorted the portion of total crime committed by Chicanos. According to Deutsch, law enforcement confidently asserted that "prosecution of Chicanos accounted for three-quarters of Weld County court cases."⁵⁶³ But the federal investigation in 1924 showed that "even including appearances as plaintiffs, Chicanos accounted for only 6 percent of the total court cases in the county and 10 percent of the justice of the peace cases."⁵⁶⁴ In some areas, a fee system prevailed, so that constables and other officers whose income depended on fines and costs advised their victims to plead guilty.⁵⁶⁵ Not speaking fluent English, Chicanos would often confess to charges they did not understand.

Intriguingly, when the post-World War II civil rights organizations, such as the Unity Council and the Denver Commission, entered the picture and began looking into discrimination in Colorado, they noted the "White Trade Only" signs found in northern Colorado and the pattern of discrimination affecting Mexican residents there.⁵⁶⁶ True to that era, however, they also noted "the failure of people from the Southwest and Mexico to adjust in an Anglo-dominated society."⁵⁶⁷ One wonders what exactly it means to adjust to a society that does not want your type of trade, pays you a less-than-subsistence salary, and tells your children they need little education because their natural lot in life is to labor in the fields under the sun, just like you.⁵⁶⁸ In terms that take euphemism to a higher level, one civil rights investigator blandly reported that "[s]ugar beet work is usually a family endeavor"⁵⁶⁹—one imagines, like a picnic or trip to the park. This "family affair," the very same report noted, also included houses lacking foundations, running water, toilets, refrigerators, drainage, and electricity, and heads of families

562. *See id.* at 152.

563. *Id.*

564. *Id.*

565. *See id.*

566. *See ROSKELLEY & CLARK, supra* note 255, at 3, 10.

567. *See id.* at 3.

568. *See generally* DEUTSCH, *supra* note 47; CAROL ANDREAS, MEATPACKERS AND BEEF BARONS: COMPANY TOWN IN A GLOBAL ECONOMY (1994).

569. ROSKELLEY & CLARK, *supra* note 255, at 13.

who found they "could not collect their money when they had earned it" because the growers unilaterally decided they owed too much money to the company store⁵⁷⁰ or intentionally withheld payment at the end of one harvest to make sure the worker would come back the following year.⁵⁷¹ The work was backbreaking with "long hours . . . literally the bottom of the agricultural ladder."⁵⁷² Local merchants, including the company store, extended credit—an unfamiliar practice to the farmworkers—on extortionate terms, knowing they would be unable to meet them.⁵⁷³ Describing this early period, Deutsch concluded that Anglo culture kept Hispanic workers seasonal, poor, and insecure.⁵⁷⁴ In collusion with the state government, it made Chicanos "collaborators in their own . . . marginality."⁵⁷⁵

At one point, the rural sugar beet counties persuaded the Colorado legislature to pass a bill providing that no public funds would be spent for the burial of the poor. If no relative were available to cover the costs of burial of an indigent person, his or her body would be transferred within twenty-four hours to a medical school for dissection. "Aimed at sugar-beet workers, the statute struck mortal terror to the hearts of thousands of Mexicans."⁵⁷⁶ Some responded by buying burial insurance they could scarcely afford; the Catholic Church set up an emergency fund as well. The situation was a bitter one in which "[e]ven in death, poverty stigmatize[d] the Mexican beet worker; and even in death, the Great Western Sugar Company disclaim[ed] responsibility."⁵⁷⁷

As a postscript, the reader who imagines that postwar prosperity and increased sensitivity to racial issues made life better for rural Mexican farmworkers may wish to know that a

570. *Id.* at 15.

571. *See ATKINS, supra* note 47, at 100.

572. *ROSCELLEY & CLARK, supra* note 255, at 20-21.

573. *See DEUTSCH, supra* note 47, at 138; *see also* Aguayo, *supra* note 519, at 116 (merchants overcharged and took advantage of workers' lack of proficiency in English).

574. *See DEUTSCH, supra* note 47, at 209. Addressing the complaint that farmworkers often choose not to naturalize, one author points out two interrelated reasons: they long for Mexico, and they receive poor treatment and racism in the United States. *See Kulkosky, supra* note 263, at 124.

575. *DEUTSCH, supra* note 47, at 209.

576. *MCWILLIAMS, supra* note 6, at 128.

577. *Id.*

Denver Post investigation of conditions in a rural area of Colorado in the 1970s showed a pattern of arrests, police shootings, shanty-type housing, poverty, and stereotyping of Hispanics as "unstable, . . . lazy" and mentally inferior that could have been taken right out of the 1940s-era literature.⁵⁷⁸ Another article observed, "Hispanos in cars are stopped frequently for no apparent cause. . . . But there's no police car waiting outside the Veterans of Foreign Wars hall or the American Legion to arrest drunken Anglos."⁵⁷⁹ Finally, a recent book by two Colorado historians noted that:

To this day, several thousand Spanish-surnamed people [spend the] summer in Adams County migrant labor camps, where wages and conditions remain primitive. Improvements have been blocked by the Colorado General Assembly. Representative Walter Younglund, longtime chairman of the House Agricultural Committee, once argued that employers should not be required to provide field toilets, wisecracking that migrant laborers would not know how to operate them. Younglund, who boasted that the leather peanut pouch on his desk was a trophy carved from an Indian woman at the Sand Creek Massacre, was not noted for his sensitivity to minorities. He persuaded the legislature to flush the 1986 toilet bill.⁵⁸⁰

B. Mining

As was mentioned in the early pages of this article, mining drew not only Anglos eager to strike it rich, but Mexicans, Chinese, Italians, and other immigrants needed to carry out the hard, dangerous work of extraction.⁵⁸¹ Later, when coal mines opened, reliance on foreign and minority workers increased. Over 3000 Mexican coal miners were recruited from

578. Judith Brimberg, *Ft. Lupton and the Hispanos*, DENV. POST, Mar. 1, 1971, at 48; see also Obmascik, *supra* note 6.

579. Judith Brimberg, *Race Solution Eludes Ft. Lupton*, DENV. POST, Mar. 2, 1972, at 48.

580. LEONARD & NOEL, *supra* note 47, at 347-48; see also Judith Brimberg, *Chavez Jailing, Coloradans' Training Dramatize "Fight"*, DENV. POST, Dec. 28, 1970, at 45 (United Farm Worker-trained leaders led activism in Center, Colorado lettuce fields over labor conditions, piecework pay, powerlessness, and police brutality).

581. See *supra* notes 287-88 and accompanying text.

New Mexico and southern Colorado.⁵⁸² Recall how in northern Colorado, the sugar beet growers had issued recruitment brochures that promised a garden plot, adequate housing, water, milk, and eggs:⁵⁸³ benefits that the grower had no intention of providing.⁵⁸⁴ However, during the coal boom in southern Colorado, in the period roughly from 1900 to 1915, company towns were built by the Colorado Fuel and Iron Company, using a grid pattern that contrasted with earlier adjacent Hispanic settlements built around central plazas.⁵⁸⁵ These mining camps, having no central gathering places, destroyed traditional Hispanic community, but, being relatively large, inadvertently provided an opportunity for activism to develop.⁵⁸⁶ Workers, dissatisfied with or denied their wages or paid in worthless scrip, and angered by extortionate prices at the company store, struck.⁵⁸⁷ When the strike began, the company evicted them from their homes in the camps, serving notice on the residents of thirteen tent colonies located near the entrance to the mines.⁵⁸⁸ By 1914, the United Mine Workers Union was providing financial support for 21,500 striking workers.⁵⁸⁹ Foreshadowing what was to come later when Mexicans became surplus labor, Colorado sent its National Guard to keep an eye on things.⁵⁹⁰ And on April 20, 1914, as happened earlier with the Indians at Sand Creek, the troops opened fire with rifles and a machine gun on the colonies, many of whose residents (also perhaps recalling what happened at Sand Creek) had dug trenches and cellars.⁵⁹¹ But the militia burned the tents, opened fire, and killed at least eighteen workers in what has come to be known as the Ludlow Massacre.⁵⁹² Massacre victims included

582. See DEUTSCH, *supra* note 47, at 129.

583. See *id.*

584. See *supra* note 530; DEUTSCH, *supra* note 47, at 129.

585. See DEUTSCH, *supra* note 47, at 87-92.

586. See *id.* at 103-05.

587. See *id.* at 103.

588. See *id.*

589. See *id.*

590. See *id.* at 103-05.

591. See *id.* at 105.

592. See *id.*; see also M. Edmund Vallejo, *Recollections of the Colorado Coal Strike, 1913-14*, in LA GENTE, *supra* note 47, at 85, 96.

Mexicans, Italians, some Anglos, many other ethnic miners, and children.⁵⁹³

C. Meatpacking

In a 1994 study rivaling Upton Sinclair's *The Jungle*, Carol Andreas, a professor at the University of Northern Colorado in Greeley, investigated conditions in a giant meatpacking plant in Greeley.⁵⁹⁴ Operated by the Monfort Corporation (now ConAgra), the plant employs many minorities, especially Mexican and Chicano/a workers. Andreas found it to have a high injury rate—two and a half times the national industry norm for meatpacking.⁵⁹⁵ Given their high rate of employment at the plant, minority workers bear a disproportionately high number of injuries. If one visits Greeley today, one is apt to see Mexican-looking people with fingers or other body parts missing—a legalized Sand Creek. Workers must use sharp knives to trim meat on the production line, and the company required them to work so fast that accidents were inevitable.⁵⁹⁶ Those who showed fear of losing body parts or who complained of sore hands, arms, backs, or bodies were accused of “whining.”⁵⁹⁷ Besides requiring employees to work at an unsafe speed and giving them little or no training in the use of sharp knives, supervisors did not allow them to go to the bathroom when needed.⁵⁹⁸ And the company further discriminated against Mexican workers by calling them “wetbacks.”⁵⁹⁹ By 1980, a union was agitating for better, safer working conditions for its members, but the company ruthlessly broke its back, closing the plant for two years and holding the threat of future closures over the heads of workers.⁶⁰⁰

Monfort's mistreatment of its labor force evokes little outrage in Greeley. The town has a long history of denigration and exploitation of minorities; in 1936, a huge banner flew in the town: “All Mexican and other aliens to leave the State of

593. See ACUÑA, *supra* note 462, at 165. Ludlow was not the only massacre of dissident miners. See Vallejo, *supra* note 592, at 96.

594. See generally ANDREAS, *supra* note 568.

595. See *id.* at 6.

596. See *id.* at 83-108, 109-14.

597. See *id.* at 167.

598. See *id.* at 4, 87.

599. See *id.* at 102.

600. See *id.* at 5.

Colorado at once by order of Colorado State vigilantes.”⁶⁰¹ At one point, the townspeople, fearing “contamination” and disease from the Mexicans, arranged to send blood samples from them back to Washington, D.C. All the tests came back negative.⁶⁰²

The colonias set aside for the Mexican meatpacking workers were primitive, at best. Reporters commented that World War II camps for German POWs near Greeley had hot and cold running water and other luxuries not available to the Mexicans.⁶⁰³ From time to time, the Immigration and Naturalization Service would raid the plant and the colonias, seizing and removing workers who were about to be paid.⁶⁰⁴

Note as well that the local public university in Greeley, the University of Northern Colorado (“UNC”), enjoys a cozy relationship with the Monfort family and its meatpacking plant.⁶⁰⁵ Once the UNC administration withdrew an article from a campus publication that was critical of working conditions in the plant.⁶⁰⁶ On another occasion, the Monfort family donated one million dollars for a chaired professorship at another area university, Colorado State University in Fort Collins, then hand-picked an animal science researcher who had worked for the company to fill that position.⁶⁰⁷ He got the position, took the case to the press that red meat does not cause cancer,⁶⁰⁸ and backed a Colorado perishable-food products defamation law that would have punished anyone making statements critical of the beef industry.⁶⁰⁹ The bill, however, was vetoed by the governor.⁶¹⁰ Recently, Ken Monfort was inducted into the Colorado Agriculture Hall of Fame,⁶¹¹ even though his company’s labor record instead would seem rather to qualify it for infamy.

601. *Id.* at 12.

602. *See id.* (citing a story appearing in the *Greeley Tribune* on January 28, 1990) (“negative” is a term for a test indicating no pathology).

603. *See id.* at 14.

604. *See id.* at 21.

605. *See id.* at 48-49.

606. *See id.*

607. *See id.* at 49-50.

608. *See id.* at 50.

609. *See id.*

610. *See id.*

611. *See id.* at 167.

VI. THE ROLE OF THE UNIVERSITY: COLLEGE TOWNS

Until now we have been concerned with racial treatment and discrimination in the broader society of Colorado. Now it is time to examine the part played by universities and their immediate college town settings in advancing or impeding minorities' search for higher education opportunity. This will entail examining how Colorado universities acted in relation to minorities of color both outside and inside the institutions—that is, how these institutions treated minorities in Colorado workplaces, elementary schools, meatpacking plants, and other such areas—as well as those located in their midst: students, faculty, and staff members.

We have already seen that academic elites played major roles in official knowledge-production with respect to minorities at the request of the Denver Commission on Human Relations and related governmental task forces.⁶¹² Recall, as well, how academics from the state universities testified as expert witnesses in school desegregation cases, often declaring that Chicano schoolchildren had no one to blame but themselves and their culture for failure to succeed in school.⁶¹³ Major Nichols, whom we met earlier in his role as “Indian fighter”⁶¹⁴ (massacrer, really, of Indian women and children on at least two occasions), was instrumental in founding the University of Colorado years later when, as a member of the new state's legislature, he used his influence to have the school's first campus located in Boulder rather than Cañon City, with which it had been vying for this honor.⁶¹⁵ Although Nichols' “midnight ride” from Boulder to Denver with a \$15,000 cash guarantee to secure Boulder's place in history is disputed,⁶¹⁶ it is clear that he used his considerable influence on Boulder's behalf in the competition for the situs of the state's first college town. Finally, we have seen as well how the college towns of Greeley and Fort Collins cooperated with Monfort and the

612. See *supra* Part IV.B.

613. See *supra* notes 458-61 and accompanying text.

614. See *supra* notes 61-64 and accompanying text.

615. See LIMERICK, *supra* note 60. For the consequences of this decision, see *infra* Part VI.B.

616. See LIMERICK, *supra* note 60, at 8-11 (arguing that this midnight dash might not have occurred).

meatpacking industry in their struggle for profits at the expense of their predominantly Latino workers.⁶¹⁷

In focusing, as this section does, on the University of Colorado at Boulder ("University") as the state's flagship university, it is well to keep in mind that the Boulder campus and surrounding community often worked in concert to achieve racial ends. A University of Colorado administrator reportedly told a group of Latinos in the mid-1980s, "Boulder will remain white, the way it is."⁶¹⁸ Fifty years earlier, during the Depression, the town also reportedly voted to allocate money to send Mexicans back to Mexico to avoid welfare costs.⁶¹⁹ The two events, we believe, show starkly the dominant tone that pervaded both campus and town.

A. *The Boulder Campus*

For the first approximately thirty years of its existence, the Boulder campus of the University of Colorado was all white and practically all male.⁶²⁰ The first black male graduated in 1914; the first black woman, Lucile B. Buchanan, in 1918. The first African American graduated from the law school in 1924, the first Latinos, Manuel U. Vigil and Jose Celso Espinosa, both from Albuquerque, New Mexico, in 1907.⁶²¹ The first African-American professor joined the faculty in the 1960s.⁶²² Not allowed to live in the residence halls until the 1940s, black students attending the University had to live off campus in boarding houses in a "negro" neighborhood located in the Goss Street area of Boulder.⁶²³

617. See *supra* notes 601-07 and accompanying text.

618. Interview with a professor, Latino/a Research & Policy Center, University of Colorado at Denver (Nov. 10, 1998) (quoting a University of Colorado administrator, 1986-87). Whether she was lamenting or declaring that situation is a matter of conjecture.

619. See *id.*

620. See David M. Hays, Archivist, University of Colorado, *The Race, Ethnicity, and Gender Issues at the University of Colorado: 1876-1955* (unpublished paper, on file with the authors).

621. See David M. Hays, Archivist, University of Colorado, 'A Quiet Campaign of Education': The University of Colorado and Minority Rights, 1877-1995, at 6, 8 (unpublished paper, on file with the authors).

622. See Hays, *supra* note 620, at 6.

623. See *id.* at 13; Dan W. Corson, *The Black Community in Boulder, Colorado* 37 (1996) (unpublished paper, on file with the authors); see also GRANT ET AL., *supra* note 211, at 17.

Early in its history, the campus faced a moral quandary when James H. Brewster, a law professor from the University of Michigan, served on a committee to investigate reports that the Colorado National Guard had abused striking miners at Ludlow and acted as lawyer for the unions before a congressional committee investigating the strike.⁶²⁴ The next year, he accepted an appointment at the University of Colorado School of Law. When he testified before the U.S. Commission on Industrial Relations in December 1914, the Governor of Colorado demanded his dismissal. University President Livingston Farrand refused to fire him.⁶²⁵ Then, Brewster was invited again to testify in Washington, DC; this time, the University's president pressured Brewster not to go and said he would have to resign.⁶²⁶ Brewster decided not to testify, but his appointment was not renewed anyway.⁶²⁷ Farrand insisted that Brewster's labor activism had nothing to do with his nonrenewal—Brewster allegedly was let go "because of his health" and age (he was in his late fifties).⁶²⁸ John D. Fleming, dean of the law school, agreed, issuing a public statement that Brewster was indeed let go for health reasons unrelated to his part in the Ludlow proceedings.⁶²⁹

Aside from such incidents, during the first half of the century, the University campus devoted little attention to minorities. Their numbers were few (in the case of the faculty, zero), and "[o]n and off campus publications often featured racial and ethnic stereotypes in advertising and cartoons."⁶³⁰ When, toward mid-century, student pressure forced the University to take notice, it moved cautiously so as not to offend public sensibilities.⁶³¹ When African Americans were finally allowed into the dorms around 1941, housing officials paired them with each other or gave them single rooms, so that

624. See Daniel H. Pollitt & Jordan E. Kurland, *Entering the Academic Freedom Arena Running: The AAUP's First Year*, *ACADEME*, Jul.-Aug. 1998, at 48. See *supra* Part V.B for a discussion of mining violence and the Ludlow massacre.

625. See Pollitt & Kurland, *supra* note 624.

626. See *id.* at 49.

627. See *id.*

628. See *id.*

629. See *id.*

630. Hays, *supra* note 621, at 9.

631. See *id.* at 2.

the other half of the room went wasted.⁶³² Blacks also were barred from football and basketball by unwritten law, although track coach Frank Potts integrated his team, a measure that paid off when Claude Walton and Gil Cruter became world class athletes in track and the high jump, respectively.⁶³³

In its early history, the town of Boulder was a stronghold of the Ku Klux Klan, with one of the largest (for its size) Klan chapters in the state.⁶³⁴ Boulder and Larimer counties were instrumental in the election of Governor Morley.⁶³⁵ And with the first stirrings of civil rights sentiment in the faculty and student body on campus, liberal activists had a wide array of targets. Black students were confined to a ghetto of boarding houses in the Goss-Water (now Canyon) streets area of Boulder, in the flood plain at the town's edge.⁶³⁶ They were also barred from most of the shops, stores, and restaurants on "The Hill," an area located close to the campus and a favorite shopping target for Boulder college students.⁶³⁷ Black students had to go to Denver for haircuts because local barbers would not serve them.⁶³⁸ Fearful of publicity (and perhaps mindful of the legislature's earlier threat of cutting off funds for harboring Catholics on its payroll), the University's first response was cautious: a faculty committee met with local merchants in hopes of persuading them to change their ways.⁶³⁹ The merchants declined, pointing out that serving blacks and Mexicans would cause them to lose their white business.⁶⁴⁰ The University then threatened to open a barbershop and cafeteria on campus, and pointed out that if it did so, the merchants on The Hill stood to lose even more, since the new facilities would be open to all students.⁶⁴¹ Most of the merchants then agreed to change their practices,

632. See *id.* at 16; Hays, *supra* note 620, at 4; see also Interview with David M. Hays, Archivist, University of Colorado (June 30, 1998).

633. See Hays, *supra* note 621, at 8-9.

634. See GOLDBERG, *supra* note 1, at 81-82.

635. See *id.* at 77.

636. See Corson, *supra* note 623, at 1; see also Hays, *supra* note 621, at 13.

637. See Corson, *supra* note 623, at 37; see also Hays, *supra* note 621, at 12-13.

638. See Interview with David M. Hays, *supra* note 632. Luis Rovira, then a student, sued the barbers who refused to cut black hair. See *id.*

639. See Hays, *supra* note 621, at 25.

640. See *id.*

641. See *id.* at 14, 17-18.

although many still segregated black and white customers, for example, by requiring African Americans to eat at a back table or to take their food outside and eat it on the sidewalk.⁶⁴²

Black students were also barred from enrolling in the University of Colorado School of Nursing in Denver,⁶⁴³ and African-American education students could not teach or practice teach in Boulder public schools; instead they had to perform their practice teaching in the relatively liberal confines of Denver, thirty miles away.⁶⁴⁴ Matters were not much better on the Boulder campus. "By 1938, a black student had to ask inquiring professors 'if he could go to tea dances or other all-University functions; that he had been afraid to try; and that there was no social life among the small negro group.'"⁶⁴⁵

As happened with the founding of the Denver Commission, World War II-era activism and civic sentiment combined with a few altruistic and courageous university officials to cause university color lines to blur. Students leaders and a sometimes liberal campus press combined forces with faculty and administrators to promote change and pressure recalcitrant landlords and restaurant owners in Boulder to desegregate.⁶⁴⁶ Greek organizations proved harder to crack; many of them refused to admit blacks and Chicanos even though their national bodies had adopted official policies forbidding discrimination in membership.⁶⁴⁷

Despite small accomplishments in blurring color lines on the Boulder campus, a controversy arose in 1942 when headlines announced that Lucille Hawkins, the second black woman to stay in a residential dormitory, was being discouraged from attending the University's medical school for clinical work required for an undergraduate degree in medical technology.⁶⁴⁸ A faculty member had advised her that she would have to attend a black medical school in St. Louis and receive University of Colorado credit, because local custom did

642. *See id.* at 28.

643. *See* Interviews with various community associates, Latino/a Research & Policy Center, University of Colorado at Denver (Apr. 22, 1998).

644. *See* Interview with David M. Hays, *supra* at note 632.

645. Hays, *supra* note 621, at 13-14.

646. *See id.* at 27-28.

647. *See* Hays, *supra* note 620, at 5.

648. *See* Hays, *supra* note 621, at 21.

not allow black medical workers to attend white patients.⁶⁴⁹ Hawkins met with student leaders and journalists to call attention to her predicament. When campus newspapers covered her story and editorialized against her discriminatory treatment, even liberal faculty members were furious—not so much over her treatment as fearing damaging results from the publicity.⁶⁵⁰

During the World War II years, Japanese students and language instructors received better treatment than blacks from both the University and townspeople, perhaps because the instructors, at least, were seen as contributing to the war effort.⁶⁵¹ Apparently, the irony of fighting for democracy overseas while maintaining discrimination and segregation at home eventually caused some softening of resistance toward all minorities, as discussed generally in other sections of this article, both in the University and among townspeople and merchants.⁶⁵²

The 1960s and 1970s were times of intense civil rights and antiwar activism on campus, as protests and demonstrations challenged the status quo on a regular basis.⁶⁵³ Yet these efforts had little effect. Minority student enrollment today remains small—about 5.9 percent Asians (one of the smallest groups in the state), 5.7 percent Latinos, 2.0 percent blacks, and 0.8 percent Indian—while at the tenured faculty level the figures are not much better.⁶⁵⁴ The University is widely suspected today of padding even these modest figures by including Argentines, Spaniards, and white women who

649. See *id.*

650. See *id.*

651. See *id.* at 23-24.

652. See *id.* at 26-27.

653. See Hays, *supra* note 620, at 6; *Help from CU Demanded: Chicano Students Protest*, DENV. POST, Oct. 31, 1970, at 18; *Chicanos at CU Continue Protests*, DENV. POST, Mar. 18, 1972, at 3 (noting role of charismatic leader Richard Falcon); *Martinez Is Remembered as Save-the-World Zealot*, ROCKY MTN. NEWS, Oct. 31, 1973, at 5 (discussing death of Richard Falcon and emergence of new, radical leadership).

654. See *State-by-State Enrollment by Race and Ethnic Group 1995*, CHRON. HIGHER EDUC., May 23, 1997 at A39; Memorandum from Hans P. L'Orange to Richard L. Bynny, M.D., Chancellor, University of Colorado (July 14, 1997) (Hispanic/Latino Profile) (unpublished document, on file with the authors).

married Latinos in the Hispanic category, as well as Africans from that continent in the figure for African Americans.⁶⁵⁵

Only recently, in 1998, did the University open a recruiting office in Denver,⁶⁵⁶ giving force to the accusation by ethnic communities of color that the University focuses recruitment on the all-white suburbs and ignores the neighborhoods of Denver and other parts of the state such as Pueblo and the San Luis Valley, where blacks and Hispanics are heavily concentrated.⁶⁵⁷ Despite modest recruitment efforts, old-boy networks and relationships between high school counselors and University recruiters notoriously track students to their supposedly natural destination, sending black and Hispanic students to the community colleges or second-tier public universities and suburban whites with no greater promise or no better grades to flagship campuses like Colorado State University or the University of Colorado at Boulder.⁶⁵⁸

655. See Interview with a University of Colorado administrator of color (Nov. 1998).

656. See Richard L. Byyny, *Guest Opinion: Diversity Must Be Campus-Wide Goal at CU*, BOULDER DAILY CAMERA, Nov. 21, 1998, at 9A.

657. See Interview with an anonymous employee, University of Colorado Office of Admissions (Jan. 1999) (confirming that these suspicions are, in fact, true). This worker also told us that no University of Colorado representative spoke at a certain Denver high school with a 95% minority enrollment. See *id.* Yet, at least one student from this school was admitted to Colorado College, an elite private liberal arts college with a much more select student body than Boulder's. See *id.* Boulder admissions officers are said to waive rules and make exceptions for white students seeking admissions; but not for minorities. See *id.* Do student preferences come into play here? Perhaps, although the climate at the flagship universities detailed in this article would seem to make it a rational decision on the part of some high school students of color to avoid these schools in favor of ones that are more welcoming to minorities.

658. See Interview with an anonymous minority student, University of Colorado (Dec. 1998). Now a University of Colorado senior graduating with honors, this student was told by his high school counselor at a public Denver high school that he should consider joining the Army. See *id.* Had the counselor looked at the student's record, he would have learned that the student stood eighteenth in his class and had a perfect SAT verbal score of 800. See *id.*; see also Interview with a community associate, Latino/a Research & Policy Center, University of Colorado at Denver (Apr. 22, 1998). A Chicano psychologist who practices in the Denver-Boulder area and previously was associated with a clinic in a large Midwestern college town told us that when his Latina clients "let down their guard," they would tell him that they are working at dead-end jobs well below their ability level. *Id.* Depressed and "brain dead," they somatize their distress, gaining weight or developing hand and wrist injuries such as carpal tunnel syndrome. They are smarter than their work allows them to be; a condition that the psychologist attributed to their being under-counseled educationally and steered by school authorities to work far below what their IQs

Boulder recruiters are said to patronize minority applicants, for example by immediately challenging a Latino high school student with a 3.56 grade-point average—"But what are your test scores?"—and making it appear that to get into the flagship campus one needs a perfect 4.0 average and astronomical test scores,⁶⁵⁹ when the undergraduate division is relatively unselective.⁶⁶⁰

In addition, the Boulder campus requires all first-year students to live in dorms, a requirement that falls heavily on many minority families from Denver who might not want their sons and daughters living in a residence hall, but would be happy to send them to Boulder if they could commute the thirty-five miles or so.⁶⁶¹ Eliminating the rule would enable these families to save the cost of a year in the dorm, while allowing the high-achieving son or daughter to remain at home, exercising a beneficial influence over younger siblings, who might be tempted to experiment with drugs or gangs. Hispanic families are often protective, especially of daughters, and might hesitate to allow them to live in a dorm that they perceive as an "animal house" atmosphere, with alcohol, sex, drugs, and an unserious academic environment.⁶⁶² Boulder also tolerates, and perhaps benefits from, a "party school"

would permit. The counselor treated patients in Colorado and the Midwestern town with the same complaints and decided they were not a community hysteria, but true. *See id.*

659. *See* Interview with an anonymous employee, *supra* note 657.

660. Boulder accepts about 84.9 percent of all who apply; the average SAT score for entering students is 1155. *See* Interview with an anonymous employee of the University of Colorado Office of Admissions (Feb. 1, 1999).

661. *See* Interviews with several faculty members at the Latino/a Research & Policy Center, University of Colorado at Denver (Apr. 22, 1998). The university may waive this requirement, but rarely does so for minorities, apparently in the belief that students of color need to bond with Anglo culture and cut ties to their communities.

662. *See id.*; *see also* *The Colorado Colleges: It's Not Clear that Affirmative Action Is the Responsible Cause of High African-American Dropout Rates*, J. BLACKS IN HIGHER EDUC., Winter 1997-98, at 39 (large disparities persist in white and black dropout rates even in nonselective colleges like UNC or Fort Lewis College; yet blacks do well at CU-Denver, a comparatively selective college where affirmative action comes into play more and the disparity in entering credentials between the two groups is wider. The prestigious journal hypothesizes that living at home helps minorities at this urban campus: they can save money and enjoy the support of family and the African-American community).

reputation⁶⁶³ that discourages many minorities who see their four years at a university as an opportunity to gain an education, not a prolongation of adolescence before taking a job at Dad's firm. Until recently ordered to change this practice by the legislature, the University also preferred admitting rich out-of-state students, rather than local minorities, because the former paid the much higher out-of-state tuition⁶⁶⁴ while minorities are thought to cost the university money in financial aid and other support services.

Recent studies of the campus racial climate further indicate that minorities, both in the student body and on the faculty, feel unappreciated and beleaguered.⁶⁶⁵ A scathing 1995 report by the state auditor on conditions in the University's College of Arts & Sciences—prepared in the wake of a purge in the Sociology Department, in which three

663. See Editorial, *Bad Timing at CU*, DENV. POST, Aug. 27, 1998, at B10. Boulder administrators have made efforts, from time to time, to curtail alcoholism and instill a more serious academic atmosphere. See Interview with a former University of Colorado at Boulder Chancellor (Jan. 29, 1999) [hereinafter Chancellor Interview]. These efforts have not yielded great success, and the campus is still listed as one of the "top rated" party schools. *Id.*

664. See Chancellor Interview, *supra* note 663 (stating that the legislature tacitly encouraged out-of-state enrollment during earlier periods); Dave Curtin, *Ample College Staffs Defended*, DENV. POST, Aug. 31, 1998, at B5.

665. See Shelley Downing, *Students of Color Have Trouble Fitting in at UCB, Survey Finds*, SILVER AND GOLD, Nov. 2, 1995, at 1; see also Shelley Downing, *Report: UCB Campus Climate Uncomfortable*, SILVER AND GOLD, June 8, 1995, at 1. A 1995 study of morale problems among minority faculty of color is found in Anthony G. Lozano et al., Report on the Boulder Campus Climate for Faculty of Color (May 11, 1995) (unpublished report, on file with the authors). A predecessor report showed widespread concern on the part of minority professors that scholarship having to do with civil rights or problems of the poor was systematically undervalued and that hiring committees looked for clones of themselves, dismissing minority candidates with feeble excuses such as that minorities really wouldn't want to come here. See CU FACULTY SENATE MINORITY AFFAIRS COMM., UNIV. OF COLO. AT BOULDER, SURVEY OF CU FACULTY: A FOCUS ON MINORITY AFFAIRS (1990). Many CU faculty are dissatisfied, thinking of applying to another university elsewhere, *see id.* at 25, see themselves as excluded from decisionmaking, *see id.* at 27, believe their departments undervalue minority research and scholarship, *see id.* at 36-37, and believe that the main reason for the low numbers of minority faculty was lack of effort on the part of their schools in recruiting them, *see id.* at 90. One tenured Latino full professor told us that CU faculty of color confront a "pervasive sense of elitism" that does not include them. Earlier in his career, he proposed setting up a center to study bilingual education. The dean scoffed: "This is a research university; the study of bilingualism has no place here," and discouraged his grant application. He later relented when the professor landed two huge grants and went on to raise almost \$30 million in outside grant funds.

Chicano faculty members left—cited Arts & Sciences for violating regental orders by issuing “side letters” to the tune of \$540,000 in the recruitment of “old boys” and favored candidates; lacking control over search expenses; and for handling discrimination and harassment charges poorly.⁶⁶⁶ The report, which was understandably given scant attention by the University’s publicity factory, noted that the auditor had received many complaints of favoritism and that the Boulder campus had had to pay \$570,000 to settle various discrimination claims.⁶⁶⁷ Even high-achieving minorities with good grades often drop out,⁶⁶⁸ and hate mail and messages have been common in recent years, many of which have gone unpunished.⁶⁶⁹

The campus showcases science and astronauts, not the humanities or liberal arts, much less programs for social analysis and change. The Colorado Commission on Higher Education recently abolished a system of specific targets that campuses had to meet in enrolling and graduating minority students, in favor of a more decentralized approach in which

666. See OFFICE OF STATE AUDITOR, STATE OF COLO., UNIV. OF COLO. AT BOULDER, COMPENSATION AND DISCRIMINATION ISSUES AT THE COLLEGE OF ARTS AND SCIENCES: PERFORMANCE AUDIT 6 (1995).

667. See *id.*

668. A Chicana student who recently graduated *summa cum laude* with a double major reported that not a single one of her professors took her in hand or encouraged her to consider graduate school. At her department’s honors ceremony, the chair forgot to mention her name, even though he held a list in his hand and fawned over other honors recipients who are white. The University of Colorado at Boulder recently has been trumpeting its close faculty-student contact and counseling. Chicano/a students who persist and *do* graduate are sometimes subjected to awkward messages directed to their ethnicity. In a telling *lapsus lingua*, a graduation speaker (former Governor Roy Romer), addressing a large audience of family and friends—mostly Caucasian—of the 1998 University of Colorado School of Law graduating class at Macky Auditorium on the CU campus, listed changes in Colorado society that he foresaw for the young lawyers-to-be. These changes included, of course, globalization and an economy based on information and computers. But they also included demographic changes, in particular, the amazing growth of the state’s Hispanic population. Romer then added, seemingly spontaneously, “*and I’m not saying it’s necessarily a bad thing.*” One wonders what the reaction would have been had he said instead, “most of the computer jobs will be filled, for better or for worse, by white people, but this is not necessarily a bad thing.”

669. See *Hate Crimes Persist on Campuses*, BOULDER DAILY CAMERA, Nov. 16, 1998, at C7; Nadia White, *Hate Letter Sent to Black Student Group*, BOULDER DAILY CAMERA, July 21, 1998, at C1.

local campuses would set their own goals.⁶⁷⁰ Minorities at Boulder were furious when that campus immediately dropped its goals.⁶⁷¹

B. *The Town of Boulder*

If the Boulder campus at times proceeded slowly on behalf of racial minorities out of concern for the way in which measures on their behalf might look to the townspeople, their caution seems to have been amply justified. As discussed above, throughout much of its history, Boulder has enjoyed a reputation in the civil rights community as one of the most racist towns in Colorado. (The reputation continues, to some extent, today).⁶⁷² In 1910, Boulder had a good-sized black population (for Colorado at that point in history)—166, or about 1.7 percent of the population.⁶⁷³ By 1950, the number of blacks declined to 113, at a time when the white population

670. The stated reasons were that campuses did not like the previous "punitive" approach that withdrew funding for ones that failed to meet the targets and that public pressure rather than official oversight should suffice. See Nadia White, *Student Diversity Strategy Denied: CU Regents OK Administration's 'Living Document'*, BOULDER DAILY CAMERA, Dec. 11, 1998, at A1. The 1997 entering class contained 1.7 percent African American, 5.8 percent Hispanic, 5.8 percent Asian, and 1.0 percent Native American. See Nadia White, *Students Propose Diversity Solution*, BOULDER DAILY CAMERA, Dec. 4, 1998, at A1. Overall, the student population at CU Boulder is 2.0 percent black, 5.6 Hispanic, 6.1 percent Asian, and 0.7 percent Native American. See *Fact File: 1996 Enrollment by Race at 3,300 Institutions of Higher Education*, CHRON. HIGHER EDUC., June 5, 1998, at A35 (tabulating figures for all states). In all Colorado public colleges, Latinos are 3.78 percent of full-time faculty; at Boulder the figure is 3.91. See Memorandum from Hans P. L'Orange to Richard L. Byyny, *supra* note 654; see also Dave Curtin, *Affirmative Action Under Review: Each College May Be Able to Set Standard*, DENV. POST, June 4, 1998, at B1.

671. See White, *Student Diversity Strategy Denied*, *supra* note 670. Earlier, minority students and some white sympathizers protested the naming of the university's Special Events Center after Coors, which had given the campus a large donation. Coors is notorious in the Chicano community for its anti-Mexican labor policy, see ACUÑA, *supra* note 462, at 380, and for its backing of extreme right-wing causes. See *id.*; RUSS BELLANT, *THE COORS CONNECTION: HOW COORS FAMILY PHILANTHROPY UNDERMINES DEMOCRATIC PLURALISM* 1 (1991).

672. See Heather Morgan, *DUI Reports Worry Police*, BOULDER DAILY CAMERA, Dec. 6, 1994, at A1 (quoting a Longmont editor as saying: "[Minorities] come into Longmont to shop. They're not going to go to Boulder; Boulder's not very friendly."); Sheba Wheeler, *Bolder Boulder Yields to Public Pressure*, DENV. POST, Apr. 26, 1997, at A1.

673. See Corson, *supra* note 623, at 3-4 (citing 1910 and 1950 U.S. Censuses, Population Reports by States).

was growing rapidly.⁶⁷⁴ The change was not accidental. Early in its history, Boulder decided it did not want to be home to many blue collar workers; according to one account, it may even have passed a bill prohibiting anyone from carrying a lunch pail.⁶⁷⁵ It also made sure that factories and mills, which earlier had brought a population of blacks, Mexicanos, and European immigrants to Boulder, did not continue to multiply.⁶⁷⁶ Early in the twentieth century, the town fathers also passed zoning requirements that assured small but expensive lots, and that set aside much land for parks.⁶⁷⁷

674. *See id.* (during this period, the total population (mainly white) of Boulder increased from 9539 in 1910 to 19,999 in 1950).

675. *See id.* at 43; Julie Jargon, *The More Things Change*, BOULDER PLANET, Dec. 23-29, 1998, at 6 (town made decision in 1890s to start phasing industry out). Evidently, Boulder did not much care for black farmers either. *See* Frederick P. Johnson, *Agricultural Negro Colony in Eastern Colorado*, W. FARM LIFE, May 1, 1915, at 5 ("Dearfield," a black farming town in northern Colorado that flourished for about fifteen years, was founded by Oliver T. Jackson after he was ostracized and forced out of the farming business by his white neighbors near Boulder).

676. *See* Jargon, *supra* note 675, at 6.

677. *See id.* (Lots in 1859 sold for \$1,000 to "allow only select people to live here."). *Accord* Interview with Boulder City Council member Dan Corson, May 24, 1998 (early on "Boulder decided to become a white college town" and hired Frederick Olmsted to plan the community. He advised them to "[g]et rid of industry and have a community of nice homes"). On the role of this famous city planner, *see* FREDERICK LAW OLMSTED, JR., *THE IMPROVEMENT OF BOULDER COLORADO* 4-5 (1910):

There are places which people endure merely because they find there opportunity for economic gain. . . . In such places, conditions making for comfort and happiness of living . . . must be regarded as entirely secondary to conditions that make for increasing productiveness.

. . . .

Boulder is plainly not such a place.

Id. Olmsted approved of Boulder's catering to the University of Colorado, then one of its largest employers and sources of revenue. *See id.* at 6. But he warned against harboring industry, particularly the kind that could raise "noise, dirt, disorder, or annoyance." *Id.* at 6-7 (emphasis added). To keep industry out, he urged that Boulder establish rules that discouraged it and provide no infrastructure that would enable industry to be profitable. *See id.* at 6-8. Olmsted recommended small, but expensive, lots, and large parks, *see id.* at 82-86, and concluded that if Boulder followed his advice this would result in a "progressive municipal policy." *Id.* at 106.

Readers interested in exploring Olmsted's attitudes toward the poor and other riffraff may wish to consult ARNOLD W. BRUNNER & FREDERICK L. OLMSTED, *A CITY PLAN FOR ROCHESTER* (1911), setting out a plan for a city devoted entirely to the prosperous:

It lies in the City's own hands to fix an arbitrary minimum in regard to many of the conditions controlling the healthfulness and agreeableness

These official policies had a predictable effect: blacks, migrant families, and blue collar workers left for Denver.

Early black families in Boulder enjoyed little job mobility, being limited to menial work as day laborers, janitors, servants in white homes, and bellhops in hotels.⁶⁷⁸ Confined residentially to "The Jungle," a district of rundown houses, few found it possible to venture out of the dismal circumstances the town allowed them.⁶⁷⁹ The 1890 U.S. Census showed blacks holding only menial jobs.⁶⁸⁰ "The nature of the available jobs helps explain why fewer of the later black arrivals to Boulder made [it] their long term residence,"⁶⁸¹ as one writer somewhat euphemistically put it. Explaining the steady decline of black population from a high in 1910 to a low in 1950, the same writer said: "[T]he primary reason for this decline was the lack of job opportunities available to black citizens."⁶⁸²

In short, discriminatory practices in and around Boulder were commonplace. Black high school students were excluded from social clubs. Overtly discriminatory incidents, including Klan tactics, occurred into the 1940s.⁶⁸³ When Ruth Flowers arrived in Boulder in 1917, for example, she was refused service during her first day in the town at a restaurant, ice cream parlor, and movie theater.⁶⁸⁴ She felt that Boulder was dominated by southern attitudes because of the influence of the Texans who founded Chautauqua, a vacation and cultural community, and because of the Texans and Oklahomans who were being treated at Boulder's sanatoria.⁶⁸⁵ Despite her unwarm welcome, she went on to obtain bachelor's and master's degrees in romance languages at the University of Colorado and later earned a doctorate and a law degree.⁶⁸⁶

of the people's habitations and places of work, and thus to prevent those who cannot, or who foolishly will not, rise to that minimum standard from competing directly with those who do.

Id. at 7-8.

678. See Corson, *supra* note 623, at 15-17.

679. *Id.* at 1, 6. This district is now the site of the Boulder Public Library.

680. See *id.* at 17.

681. *Id.*

682. *Id.* at 26.

683. See *id.* at 26-27.

684. See *id.* at 35.

685. See *id.*

686. See *id.* This, despite not being allowed to graduate from Boulder High School. See Interview with David M. Hays, *supra* note 632.

Another African-American woman, Lillian Wheeler, came to Boulder when her sister-in-law praised the "climate."⁶⁸⁷ At first, she too was enthusiastic, but her husband could not find work except as a waiter in the Hotel Boulderado. Consequently, he returned to their family farm in Mississippi and commuted to Boulder, which led to the breakup of her marriage.⁶⁸⁸ Although she denies being on the receiving end of intense discrimination herself, she remembers jokes and the color line at the Boulder Theater.⁶⁸⁹ She also recalls that the football coach at the University refused to let her son play on the University's team.⁶⁹⁰

Perhaps, most tellingly, Boulder's politics were racially discriminatory. The Klan carried the Boulder County legislative and judicial offices in the 1924 election.⁶⁹¹ And heavy Klan turnout in Boulder and Larimer counties was thought to be key in Governor Morley's election.⁶⁹² The Boulder-area Klan burned crosses in the front yards of Italian and Latino residents of Lafayette, an integrated community nearby, as well as on the grounds of the Catholic church they frequented.⁶⁹³ At its heyday, Boulder County contained an astounding 2000 Klan members.⁶⁹⁴ "A cross was [even] burned in the yard of a member of the University of Colorado's Unity Council during the war years."⁶⁹⁵

Although no longer dominated by the Klan, Boulder has continued to maintain a policy of exclusionary zoning, which keeps housing costs high and makes it very difficult for middle or working class people, including minorities, to move into the city.⁶⁹⁶ The University benefits from this policy because of the

687. Corson, *supra* note 623, at 35.

688. *See id.* at 36.

689. *See id.*

690. *See id.*

691. *See id.* at 38.

692. *See id.*

693. *See id.*

694. *See id.* at 39.

695. *Id.* at 40.

696. *See* Jargon, *supra* note 675, at 5 (common for CU professors to serve on the city council, which devised open space or "blue line" plan, areas above which no building would be allowed); *see also* Nadia White, *Married CU Students Voice Housing Woes*, BOULDER DAILY CAMERA, Sept. 8, 1998, at A1 (married student housing is at least 50% minority; residents complain that it is dirty and unsafe with "pigeon infestation . . . moldy carpets . . . garbage [disposals] that spew food into the bathtub . . . dishwasher leaking out through light fixtures in the

increase in the value of its investments in land and that of faculty homes. Through the years, university personnel have served as architects of that policy, through service on the Boulder City Council and regional planning boards.⁶⁹⁷ Environmental spirit runs high, with vast tracts of land set aside for open space, while commitment to diversity or low-cost housing⁶⁹⁸ runs low.⁶⁹⁹

The author of a history of Boulder wrote:

The increasing overt discrimination did not in itself change the primary range of jobs open to blacks in Boulder, but it may have prevented blacks from becoming middle-class citizens and business owners What is most striking is the talent that left Boulder because of the lack of opportunity in Boulder.⁷⁰⁰

Among the many who left, the same writer mentioned an engineer, a social worker, and public administrator, all children of one black woman, Emma McVey, who died in 1951. "The loss of the McVeys, the Morrisons, and many others was truly a loss to the community."⁷⁰¹ On reviewing the record, one

apartment below." Single students living on campus, by contrast, enjoy amenities such as air conditioning and high-speed computer network access). This same housing department once asked a black professor: "Wouldn't you rather be with your own people?" Interview with David M. Hays, *supra* note 632.

697. See Jargon, *supra* note 675, at 5.

698. Animal species, however, are treated with great solicitude. See, e.g., Jason Gewirtz, *Prairie Dog Colonies to Move to New Home*, BOULDER DAILY CAMERA, Jan. 20, 1999, at C1. Is Boulder's brand of environmentalism inherently antagonistic toward racial minorities and civil rights? One can only speculate. Most environmentalists are politically liberal, yet population control, an important tenet of one strand of environmentalism, could set environmentalists at odds with fast-growing, Catholic or migratory populations. So could an unconscious environmental aesthetic. Compare Gewirtz, *supra*, with GRANT ET AL., *supra* note 211, at 31 ("People were so impressed by environment. This is why whites would tell us, 'No, no, you can't buy in this area. This area has a particular tone to it—the beauty of our city. Your type . . . doesn't fit in.'").

699. See *supra* notes 685, 688; Poppen, *supra* note 284, at A1.

700. Corson, *supra* note 623, at 44.

701. See *id.* These losses lie not just in the distant past. Boulder schools today are notorious in the minority community for fights, unpunished epithets, and insensitive teaching. Recently, minority parents have been pressing Boulder High School to do something about its high dropout rate for Hispanic and black students. When a diversity-training requirement went into effect, two school board members refused to participate on the grounds that it constituted impermissible tinkering with their private social beliefs. See Editorial, *Reluctant*

wonders whether that loss was not exactly what Boulder hoped would happen.

C. *Other Campuses*

Other public colleges and universities in Colorado have similarly spotty records of racial fairness. The reader will recall the earlier discussion of collaboration on the part of two universities with Monfort's mistreatment of meatpacking workers and the part university professors played in resisting school desegregation suits and painting Latino culture as deficient for the Denver Commission and similar groups. On the Greeley campus, for example, an early contingent of black women accepted for study there created a problem for the administration. Reluctant to allow them to live in the dorms, even in shared rooms, the school insisted they live off-campus in a shared house, where it watched them like a hawk and insisted they abide by all regulations, as though they lived in a dorm.⁷⁰² Later, the group living in the house moved away due to gunshots and shattered windows.⁷⁰³ In physical education class, a school doctor asked to examine one of the women a second time. When she inquired about the reason for the re-examination, he answered that she had a nervous constitution,

Learners, BOULDER DAILY CAMERA, Jan. 10, 1999, at E2. This prompted a white parent of a black child to write:

I worry about having a school board member who characterizes an educational opportunity as a "waste of time."

....

Every thoughtful educator asks questions about the impact of teaching on learners. . . .

. . . I could give Mr. Shonkwiler dozens of examples of the . . . blatant acts of racism that my son, as an individual, and we, as a family, encountered in our schools. I can name teachers . . . and yes, even a few school board members . . . who were in serious need of education about honoring diversity in order for my son to obtain an educational opportunity equal to that offered to my . . . other [white] children.

Manert Kennedy, *Shonkwiler Must Fear His Own Behavior*, BOULDER DAILY CAMERA, Jan. 18, 1999, at A6. A Hispanic professor (tenured, full professor) at CU-Boulder told us recently that his daughter was treated cruelly in Boulder schools and called a "spic." Another Boulder school labeled one of his children learning disabled, presumably because of her ethnicity. The professor eventually pulled all of his children out of Boulder schools and home schooled them himself.

702. See GRANT ET AL., *supra* note 211, at 58.

703. See *id.* at 111.

the first that he had seen in a black. He asked her if she was sure both her parents were Negroes.⁷⁰⁴

Similarly, a recent study of minorities enrolled in three graduate programs of Social Welfare in Colorado found high levels of alienation and dissatisfaction. Students complained that professors and student colleagues had low expectations of their ability.⁷⁰⁵ A graduate of the University of Denver said her advisor told her not to go into education because there were few openings for blacks.⁷⁰⁶ Hearings held by the Colorado Civil Rights Commission on conditions at the University of Northern Colorado included testimony by a professor that the campus administration "enhanced" its number of minority faculty members by counting marginal or part-time academic employees, including a Latino tennis coach at the Lab School who taught two hours a week in the spring.⁷⁰⁷ A former chair of the Black Studies Department there also described how members of the Colorado Ku Klux Klan had marched on the campus during a speech by Dr. Benjamin Hooks of the NAACP.⁷⁰⁸ In 1983, a cross was burned outside the Marcus Garvey Cultural Center at the school,⁷⁰⁹ fireworks were set off outside the home of an African-American administrator, and racial slurs were posted on the bulletin board outside the student newspaper office.⁷¹⁰ A large "N" appeared on the door of a black female student's dorm room. Applied with indelible paint, it had to be sanded off. She later withdrew from the school.⁷¹¹ However, the university dismissed most of these events as pranks or inconsequential.⁷¹² When the university brought a group of minority high school students to visit the campus and boasted of its minority recruitment efforts, black student leaders pointed out that it had done so over a month after the deadline for financial aid expired, and the admin-

704. *See id.* at 58.

705. *See* Irma Jean Anthony, *Minority Student Experiences in Graduate Schools of Social Work in Colorado* 139, 175 (1996) (unpublished Ph.D. dissertation, on file with the University of Denver Library).

706. *See* GRANT ET AL., *supra* note 211, at 103.

707. REPORTER'S TRANSCRIPT, NINTH REGULAR MEETING OF THE COLORADO CIVIL RIGHTS COMMISSION 28-29 (1984) (on file with the authors).

708. *See id.* at 53.

709. *See id.* at 55.

710. *See id.*

711. *See id.* at 138.

712. *See id.* at 121-22.

istration had neglected to inform minority student organizations so they could boost the effort by joining forces with it.⁷¹³

When the state decided to establish the University of Colorado at Denver campus in an area known as Auraria, the residents of this traditional, attractive Chicano neighborhood fought back. Forming the Westside Coalition, they waged a losing struggle as block after block was lost to the university's implacable takeover.⁷¹⁴ Over 300 families were displaced and about 100 buildings demolished. The university apparently had a bad conscience about the matter; it later made amends to the community, offering scholarships to members of dislocated families and free use of certain of the campus's facilities.⁷¹⁵

A volume entitled *Democracy's College in the Centennial State*⁷¹⁶ reports that Colorado State University worked hand-in-glove with a racist town to minimize minority enrollment.⁷¹⁷ Editorials in the campus paper ridiculed integration and the black civil rights movement, even while veterans were marching against Fort Collins merchants whose places of business sported "White Trade Only" signs.⁷¹⁸ Even after the signs disappeared later in the decade, "discernible prejudice against Mexican Americans and blacks was frequently evident."⁷¹⁹ Not until 1960 did the university housing office stop accepting discriminatory listings; minorities still had difficulty finding off-campus housing and were often told: "Sorry, it's already been rented."⁷²⁰ In 1968, the Colorado Civil Rights Commission held hearings on discrimination at the university, finding that the university paired blacks in dorms; required photos of job applicants; did not offer ethnic studies

713. See *id.* at 184-85.

714. See George Rivera et al., *Internal Colonialism in Colorado: The Westside Coalition and Barrio Control*, in *LA GENTE*, *supra* note 47, at 203, 212-13; LEONARD & NOEL, *supra* note 47, at 396-97.

715. See Interview with a professor, Latino/a Research & Policy Center, University of Colorado at Denver (Nov. 10, 1998).

716. JAMES E. HANSEN, *DEMOCRACY'S COLLEGE IN THE CENTENNIAL STATE* (1977).

717. See *id.* at 445.

718. *Id.* at 359, 440-41.

719. *Id.* at 445.

720. See *id.* at 455.

courses; and did nothing about discrimination in student organizations.⁷²¹

CONCLUSION

What does Colorado's poor civil rights record, including the record of its institutions of higher learning, indicate for the future of minority education in the state? The diversity rationale for affirmative action in higher education is undergoing re-evaluation and may soon be jettisoned or cut back. If so, attention will likely shift to remediation of past racial mistreatment. The contours of this re-emerging rationale are unknown, but understanding the extent of a region's historic discrimination against minorities of color is vital to appreciating how much of an effort may be due now to counter the effects of that discrimination.

Colorado's history contains an unbroken series of incidents of raw racism, official and unofficial, perpetrated on Asian, Native-American, African-American, and Chicano populations. The incidents range across a wide variety of areas including housing, jobs, politics, and schools. In addition, agencies of Colorado government engaged in a subtler, but no less pernicious, form of racial stereotyping and knowledge-creation when, in an effort to be helpful, they drew racial lines and described minority communities in disparaging and dispiriting ways.

University personnel and policymakers were implicated, sometimes centrally, in many of these events. Most Colorado colleges maintained all-white (and all male) faculties until well into this century. Many denied students of color admission or ghettoized them once they enrolled. The University of Colorado at Boulder excluded African Americans from the dorms until about 1940, and its faculty served as experts in suits aimed at stopping integration and in interpreting the minority community to the Denver Commission on Human Relations in ways that made its problems worse. It engaged in selective recruitment, favoring the sons and daughters of wealthy alums, suburbanites, and, until recently, out-of-state families prepared to pay high nonresident tuition. Like other campuses, it worked with merchants and town planners to

721. See *id.* at 456.

assure that the surrounding communities remained comfortable with the university and its ethnic and socioeconomic mix.

Although many features of Colorado life, and of its commitment to higher education, are commendable, Colorado's historic treatment of ethnic minorities falls far short of what one might wish. It would seem that, on any sensible interpretation of a moral and legal duty of redress, remedying this history with affirmative measures now would be squarely in order.

Finally, we suspect that other states have similar, if not more reprehensible, histories that, like Colorado's, extend into the present. We encourage other researchers to investigate these histories. With increased understanding of the past, we hope, can come better informed decisions about what should be done today.

